

QUARTERLY REPORT
of the
ATTORNEY GENERAL
of
ALABAMA

For the Period
January 1, 1952
Through March 31, 1952
Volume No. 66

**TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF
ALABAMA:**

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from January 1, 1952, through March 31, 1952, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

SI GARRETT,
Attorney General.

Attorney General:
Si Garrett

Assistant Attorneys General:

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Confidential Secretary:

Mrs. Dorothy G. Johnson

OPINIONS

January 10, 1952

Hon. O. E. Cole, Chairman

Court of County Commissioners

Russell County

Phenix City, Alabama

Bailiffs — Circuit Courts — Russell County — Constitutionality.

1. Under Act No. 107, General Acts 1947, page 33, the judges of the judicial circuits in the State of Alabama composed of one county and having only one circuit judge may or may not appoint a bailiff.

2. If a bailiff is appointed under Act No. 107, supra, it is mandatory that the judge fix such bailiff's salary not to exceed two hundred dollars per month.

3. Act No. 107, supra, requires the county governing body to pay the salary of a bailiff appointed by a circuit judge under said act, in the amount fixed by the circuit judge.

4. Act No. 378, General Acts 1947, page 269, defining the judicial circuits of Alabama, does not repeal by implication Act No. 107, supra.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of January 2, 1952, is as follows:

"The County Commission for Russell County, Alabama, request your official opinion on the following:

"1. Is the Act approved July 8, 1947 mandatory? This act being Act No. 107 at page 33, General Acts 1947.

"2. Can a Circuit Judge under the Constitution of Alabama 1901 fix a salary for a bailiff he has appointed and order the County Governing Body to pay same?

"3. Would the payment of salary for such bailiff be a legal charge on the General fund of Russell County?

"4. Was the above-mentioned act repealed by implication by the general re-circuiting bill approved August 16, 1947, General Acts of Alabama 1947 - page 269?

"As Chairman of the County Commission for Russell County, Alabama, I certify that in my judgment an official opinion on the above questions is necessary for the conduct of the County Commission of Russell County."

Your first, second and third inquiries are answered in the affirmative. Your fourth inquiry is answered in the negative.

The act referred to in your inquiry, Act. No. 107, General Acts 1947, page 33, is a general act of local application. Sections 1 and 2 of said act provide as follows:

"Section 1. The judge of any judicial circuit composed of one county having but one judge in the circuit may appoint a court bailiff, who shall hold office during the pleasure of the judge and whose term shall expire with the term of such judge, whether by death, resignation, expiration of the term for which the judge was elected or appointed or otherwise.

"Section 2. The judge shall fix the salary of the bailiff at a sum not to exceed two hundred dollars (\$200) per month, which salary shall be paid monthly out of the general fund of the county on the order of the judge."

It is to be noted that this act is only effective in judicial circuits composed of only one county and having but one circuit judge. I am informed by the office of the Secretary of State that the twenty-sixth judicial circuit, which is composed solely of Russell County, has only one circuit judge. Therefore, Act No. 107, *supra*, is applicable to Russell County. This act gives the circuit judge of the twenty-sixth judicial circuit the authority to appoint a bailiff. The act is not mandatory on the circuit judge, because he may or may not appoint a bailiff; but if the judge does appoint a bailiff under Act No. 107, *supra*, it is mandatory that the judge fix the salary of such bailiff at a sum not to exceed two hundred dollars per month. A salary having been fixed by the circuit judge, it is mandatory that the Court of County Commissioners of Russell County pay the salary of this bailiff each month when so ordered by the circuit judge.

I find no constitutional provision prohibiting the Legislature from enacting a statute similar to Act No. 107, *supra*; nor have you called my attention to any such specific provision. It is my opinion that the Legislature may authorize the circuit judge to fix the salary of his bailiff; and it is further my opinion that the Legislature may require the county governing body to pay the salary so fixed. Therefore, the payment of the salary of the bailiff appointed by the judge would be a legal charge on the general fund of Russell County.

I do not find that the "re-circuiting" act, Act No. 378, General Acts 1947, page 269, in any way repeals Act No. 107, *supra*. Section 1 of Act No. 378, *supra*, defines the twenty-sixth judicial circuit as being composed solely of one county, Russell County. I do not find that there is any other act of the Legislature authorizing more than one circuit judge for Russell County and the twenty-sixth judicial circuit. It is my opinion, therefore, that Act No. 378, *supra*, did not repeal Act No. 107, *supra*.

Yours very truly,

SI GARRETT

Attorney General

January 15, 1952

Hon. Henry W. Smith
President, Board of Revenue
Etowah County
Gadsden, Alabama

Sheriff — Solicitors — Counties — Criminal Law.

The county governing body has authority under the provisions of Title 54, Sections 9 and 10, Code of Alabama 1940, to pay the expenses incurred by the sheriff in having a transcript made of testimony to be used in the presentation of perjury cases before the grand jury.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of January 10, 1952, is as follows:

"As President of the Etowah County Board of Revenue and under the authority of Title 55, Section 240 of the 1940 Code of Alabama and Amendments thereto, I respectfully request an opinion of you on the question which arises from the following statements:

"Hon. Arthur Burns, Solicitor of this Circuit, has appeared before the Board of Revenue of Etowah County and stated that he desires to present to the next Grand Jury of this County a charge of perjury or subornation of perjury against some five persons, who, he claims, gave perjured testimony in a recent criminal case tried in this County. He states that in order to proceed against these persons before the Grand Jury, he must have a transcript of all of the testimony of the original trial for which transcript the court reporter would charge for furnishing.

"Mr. Burns contends that under Sections 9 and 10, Title 54 of the 1940 Code of Alabama, he has the authority to direct the Sheriff of this County to make an investigation of the alleged offenses and that the cost of this transcript would be considered a part of the investigation expenses which the county would be authorized to pay.

"Mr. Burns further stated that he had ordered the sheriff, in writing, to make the investigation and that it would be absolutely necessary for the sheriff to obtain the said transcript.

"The question which necessarily arises under the above statements is as follows:

"1. Can the Board of Revenue of Etowah County legally pay for the cost of a transcript of the records of a criminal trial for the purpose of presenting evidence before the Grand Jury of the County on the charge of perjury against certain witnesses who testified in said trial, all upon the request of the sheriff and circuit solicitor?

"Your immediate consideration and reply to this matter will be greatly appreciated in view of the fact that the Grand Jury of this County convenes on February 11, 1952 and time is of the essence since the court reporter will have to transcribe the records of this case before the Grand Jury meets should your opinion be in the affirmative."

I am of the opinion that your inquiry should be answered in the affirmative; that is to say, the Board of Revenue of Etowah County may pay for the cost of the transcript of the record of a criminal trial for the purpose of presenting evidence before the grand jury of the county on a charge of perjury against certain witnesses who testified in said trial.

The statutes involved in your inquiry are Title 54, Sections 9 and 10, Code of Alabama 1940. Section 9, *supra*, authorizes the sheriff, when directed in writing by the Solicitor, the Attorney General, or the Governor, to make a special investigation of any alleged violation of the law, and to prepare a written report setting forth the results of the investigation, which report shall be presented to the official who directed the investigation. It is the sheriff's duty when so requested to promptly make the investigation.

Section 10, *supra*, provides that the expense of the investigation shall be paid from the county treasury after the report is made by the sheriff. The sheriff is required to present the county governing body a sworn statement of the expenses incurred, and the written approval of the officer directing the investigation. The county governing body has the authority to audit and allow the claim for the purpose of deciding whether such expenses were reasonably necessary for the investigation. However, if the Governor or the Attorney General has approved the expenses, the court of county commissioners must allow it in the amount so approved.

It is clear that there must be written authorization to the sheriff to make a particular investigation. Quarterly Report of Attorney General, Vol. 34, page 48. Some opinions of this office have been held that certain expenses incurred by the sheriff were not properly chargeable against the county on the theory that the expenses were unnecessary. See Quarterly Report of Attorney General, Vol. 38, page 58, where it was held that the county could not pay the expenses incurred in a funeral home by the State Toxicologist in making an autopsy; and further, that the sheriff was not authorized to pay for photographs made in his investigation. On the other hand, other opinions of this office allow the sheriff to pay for services performed in the chemical analysis of alleged alcoholic beverages. Biennial Report of Attorney General, 1932-34, page 324.

I see no distinction in the two above-cited opinions of the Attorney General. It is my opinion that if it is necessary for the sheriff in his investigation to obtain evidence which requires special services, such as that of a chemist or a court reporter, and if such expenses are reasonably necessary for the special investigation being made, the county governing body should pay such expenses when the report of the sheriff has been approved by the officer directing the investigation. Obviously, in an investigation of a perjury case, the transcribed testimony of the accused, sworn to by the court reporter, is a material part of the evidence in such case. It is my opinion that the expense of obtaining such a transcript from the court reporter is a proper charge against the county in a special investigation of a perjury case. Of course, the county governing body, in paying the expense of investigations directed by the solicitor, has the authority to pass upon whether or not the expense is reasonably necessary in the investigation. If an item of expense incurred is unreasonable or unnecessary, the county governing body could refuse to pay that item of the expense; but before any expenses are paid, the circuit solicitor is required to approve the same. Sec-

tion 10, supra. The approval of such expense by the prosecuting officer should be taken into consideration by the county governing body in deciding whether or not the particular item is reasonable and necessary.

The county governing body, in my opinion, should allow expenses which at the time of the investigation were reasonable and necessary, whether the results obtained from the investigation were fruitful or not, as the sheriff might incur many expenses which were reasonable and necessary and at the same time not produce the evidence sought to be obtained.

In the case outlined by your inquiry, however, it is clear to me that the item of expense is reasonably necessary.

Yours very truly,

SI GARRETT

Attorney General

January 23, 1952

Honorable J. L. Thompson
Chairman, Board of Revenue
DeKalb County
Fort Payne, Alabama

DeKalb County -- Sheriffs.

The sheriff of DeKalb County is entitled to one chief deputy by virtue of Title 54, Section 3, Code of Alabama 1940, as amended by Act No. 635, General and Local Acts 1949, page 976; an additional deputy by virtue of Act No. 257, General and Local Acts 1951, page 538; and another deputy by virtue of Act No. 715, General and Local Acts 1951, page 1252; the salaries of all such deputies to be paid out of the general fund of the county.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion, bearing date of October 30, 1951 is as follows:

"On behalf of the Board of Revenue of DeKalb County, I request an official opinion on the following matters:

"Title 54, Section 3, 1940 Code, amended September 19, 1949, provides for one chief deputy sheriff for each county, salary to be fixed by the Board of Revenue. The Sheriff has appointed this chief deputy and the Board of Revenue has fixed his salary at \$250.00 per month.

"Act No. 257, H. 459, approved July 19, 1951, to allow the sheriff of DeKalb County, Alabama an additional deputy (amending a prior local act) provides for an additional deputy, and the Board of Revenue has fixed his salary at \$225.00 per month.

"Act No. 715, H. 1034 to allow the sheriff of DeKalb County, Alabama, an additional deputy to that now provided by law was approved September 5, 1951, and the Board of Revenue has fixed his salary at \$125.00 per month.

"However, what purports to be a general act—Act No. 670, H. 1032—was approved September 4, 1951, to provide a chief deputy sheriff and deputy sheriffs in all counties having a population of between 45,000 and 50,000 persons and to fix compensation and to require payment of the same by the county governing body. According to the 1940 census the population of DeKalb County was 43,075 and according to the preliminary reports on the 1950 census, the population of this county is 45,088. Whether or not this figure has been accepted as final by the State of Alabama, we do not know.

"The Board of Revenue is of the opinion that the local acts should continue to govern and that it would be improper to pay the salaries set up in Act No. 670.

"If Act No. 670 is effective in DeKalb County, then will it be necessary for the county to pay for a fourth deputy under the provisions of Local Act No. 715 approved one day after the approval of Act No. 670?

"Please be assured that we will appreciate your advice promptly as possible as to which acts of the 1951 Legislature are to govern the Board of Revenue in paying the salaries of the sheriff's deputies and how many deputies are to be paid."

It has been held that the later of two inconsistent statutes will prevail, although the prior one is not to take effect until a time subsequent to the passage and taking effect of the later one. *Ex parte Sohneke*, 148 Cal. 262, 82 P. 956; *Phelps v. Minneapolis*, 174 Minn. 509, 219 N. W. 872, 50 Am. Jur. 554, Statutes, Sec. 548. Thus Act No. 715, General and Local Acts 1951, page 1252, which was approved September 5, 1951, would prevail over Act No. 670, General and Local Acts 1951, page 1158, approved September 4, 1951, a general act of local application, which is applicable to DeKalb County, even though the latter act is not to take effect until October 1, 1951.

Turning to Act No. 715, *supra*, we find that "The Sheriff of DeKalb County, Alabama, is hereby allowed an additional deputy to the deputy or deputies now provided by law." On September 5, 1951, when Act No. 715, *supra*, took effect, Act No. 670, *supra*, was not in force and effect, inasmuch as the effective date of said act was October 1, 1951. Acts which are to take effect on a future date speak as of the effective date, and not as of the date of passage. *State ex rel. Brunjes v. Bockelman*, 240 S. W. 209, *Patterson Foundry and Machine Company v. Ohio River Power Company*, 124 N. E. 241. Therefore, the provision of Act No. 715, *supra*, allowing the sheriff of DeKalb County an additional deputy to the "deputy or deputies now provided by law," must be construed without recourse to Act No. 670, *supra*.

It is my opinion that the sheriff of DeKalb County is entitled to one chief deputy by virtue of Title 54, Section 3, Code of Alabama 1940, as amended by Act No. 635, General and Local Acts 1949, page 976; an additional deputy by virtue of Act No. 257, General and Local Acts 1951, page 538;

and another deputy by virtue of Act No. 715, supra; the salaries of all such deputies to be paid out of the general fund of the County. Stated differently, the sheriff of DeKalb County is now entitled to three deputies to be paid from the general fund of DeKalb County.

Very truly yours,

SI GARRETT

Attorney General

January 23, 1952

Hon. Bill Dorrough, Commissioner

Department of Public Welfare

C A P I T O L

Alabama Alcoholic Beverage Control Board — State Department of Public Welfare.

Pursuant to the provisions of Act No. 526, General Acts 1951, page 915, ninety per cent of the monthly checks representing the A. B. C. Board's distribution of profits to the credit of the sixty-seven counties for public health and welfare purposes for the months October, November, and December, 1951, constitute money owed to the State Department of Public Welfare.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of December 3, 1951, is as follows:

"New legislation was enacted by the 1951 Legislature pulling in earmarked welfare funds into the State Treasury to the credit of the State Department of Public Welfare.

"We have learned that the A. B. C. Board will distribute to the counties approximately \$248.75 per month which is earmarked for health and welfare. They base their continued distribution for this calendar year on the old law which was Act No. 255 of the 1943 Legislature amending Section 71, Title 29, Code of Alabama 1940, which reads in part as follows:

"10% shall be paid into the Treasury of the State to the credit of the sixty-seven counties of the State and shall be divided equally among each of said counties and shall be paid to them to be used by them exclusively for the purpose of public health, old age pensions, and for other purposes of the County Departments of Public Welfare."

"Further in this same section they deal with remaining profits over and above the first \$2,200,000 and the old law was interpreted to mean that 10% of the first \$2,000,000 or \$200,000 annually would be set up to the credit of the sixty-seven counties and distributed monthly to them. Therefore, the A. B. C. Board argues that this amount of money was set up to the credit of the counties prior to the enactment of the new legislation which became effective October 1, 1951, and since their year is based on the calendar year, they would have to distribute the rest of this calendar year as previously, and we then necessarily have to collect welfare's share of these monies from the counties for the period named above—October, November, and December 1951.

"Act No. 526 of the 1951 Legislature amended Act No. 255 of the 1943 Legislature and on figures taken from a county-by-county survey made by the State Department of Examiners of Accounts, it showed that 90% of the above-named monies on a statewide basis was going to public welfare and 10% was going to public health. These figures were made available to the Legislature by the State Department of Examiners of Accounts and they based their redistribution of these monies on that basis. Therefore, this department has ruled that each county will owe the State Department of Public Welfare 90% of this monthly check for the months of October, November, and December 1951.

"I desire your official opinion concerning the correctness of this department's interpretation—that is, whether each county will owe the State Department of Public Welfare 90% of the monthly check representing A. B. C. Board distribution of profits for the months of October, November, and December 1951."

The ruling of your department concerning the distribution of the monthly portion of the of the first two million dollars of the net profit derived from the proceeds of the Alabama liquor stores in accordance with Section 1 of Act No. 526, General Acts 1951, page 915, is correct. In short, ninety per cent of each such monthly distribution check constitutes profit from the proceeds of the Alabama liquor stores which is owed to the State Department of Public Welfare.

As a matter of administration, it would seem to have been much simpler for nineteen per cent of the first two million dollars to have been distributed directly to the State Department after October 1, 1951, as contemplated by Act No. 526, *supra*. But, if, as a matter of bookkeeping, the A. B. C. Board desired to distribute ten per cent to the counties for health and welfare purposes through the year 1951, this accounting decision on the part of the Board does not deprive the State Department of Welfare of its ninety per cent of that ten per cent figure for the final quarter of 1951.

Act No. 526, *supra*, is clear in its amendment of Act No. 255, General Acts 1943, page 226. Under the 1943 Act, ten per cent of the first two million dollars of the net profits derived from the proceeds of the Alabama liquor stores went to the State Treasury for old age pension and other state welfare purposes; ten per cent of such profits went to the State Treasury to the credit of the sixty-seven counties for equal division to be used for public health, old age pension and other purposes of the State Department of Public Welfare. Under Act 526, *supra*, the 1951 Amendment, nineteen per cent of such profits is to be covered into the State Treasury for the State Department of Public Welfare for old age assistance and other welfare purposes, and one per cent is to be paid into the State Treasury for equal division among the sixty-seven counties to be used for health purposes.

Thus, if the A. B. C. Board sends ten per cent of such profits to the State Treasury for equal division among the counties for health and welfare purposes, ninety per cent of this amount is owed to the State Department of Public Welfare after October 1, 1951. If the money is sent to the county governing bodies or county departments of public welfare, these agencies are merely clearing houses, so to speak, and the ultimate destination of these funds must be the State Department of Public Welfare.

Yours very truly,

SI GARRETT

Attorney General

January 25, 1952

Hon. William L. Green

Treasurer, Escambia County

Hospital Board

Escambia County

Brewton, Alabama

Escambia County — Hospitals — Funds.

Under the facts stated the Escambia County Hospital Board, organized under Act No. 46, General and Local Acts 1949, page 68 (Title 22, Sections 204 (18)-204 (30), 1949 Cumulative Pocket Part, Code of Alabama 1940), may use money derived from the special tax levied pursuant to Amendment No. LXX, Constitution of Alabama 1901, to lease portions of privately owned hospitals to be operated by said Board as public hospitals.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion, bearing date of December 19, 1951, is as follows:

"At an election called and held in Escambia County under the authority given by Amendment LXX to the Constitution of Alabama a majority of the qualified electors of the county participating in the election voted in favor of the levy and collection, in addition to all other taxes authorized by law, of a special county tax of four mills in each dollar of taxable property in the county, to be used solely for acquiring by purchase, lease or otherwise, constructing, operating, equipping, or maintaining county hospitals or other public hospitals, non-profit hospitals and public health facilities.

"In 1951, at the request of Escambia County Hospital Association, a public corporation organized under the provisions of Title 22, Section

204 (11)—204 (17) of Title 22 of the Code of Alabama, which was then the designated agency for the acquisition, construction, leasing and operation of public or non-profit hospitals within the county, the Board of Revenue of the county levied a special tax of two mills upon all taxable property within the county for the purposes authorized by the constitutional amendment referred to.

"Escambia County Hospital Association was heretofore dissolved and has been succeeded by Escambia County Hospital Board, a public corporation organized under Sections 204 (18) to 204 (30) of Title 22 of the Code of Alabama. This board was and is authorized as the agency designated by the Board of Revenue of this county to acquire, construct, equip, operate and maintain public hospital facilities and by virtue of such designation receives the proceeds of the special county tax for public hospital purposes which has been levied for those purposes by the Board of Revenue. The undersigned is the Treasurer of Escambia County Hospital Board and as such is charged with the duty of collecting, disbursing, handling and accounting for the funds received by the Board from the proceeds of the levy of the special tax.

"This Board has leased from a private owner and operates a building in the City of Brewton as a public hospital; and while it undertakes to provide service in this hospital to all persons within the county needing hospital care, this hospital facility is inadequate for that purpose, being not only too small to accommodate the patient load but so far removed from the western portion of the county as to make it difficult or extremely inconvenient for patients, especially emergency cases, to receive adequate hospitalization in Brewton. There are two hospitals in the City of Atmore, in the western end of the county, which are privately owned and operated. This Board has under consideration a plan whereby it may lease from one of both of the owners of such hospitals in Atmore separate wings or sections of their respective hospitals to be used by the Board to provide public hospital service to the extent that this may be done through the use of the leased portions or sections of those hospitals. Under the lease arrangement the Board would have the exclusive control and supervision of the wings or sections leased, would pay for the use and operation of the same as hospital facilities and would receive and handle all funds paid in by patients using the leased sections or wings. The Board would provide in those sections or wings the same kind of service to indigent patients in the western end of the county that it now provides at the hospital in Brewton, to the extent of the space and facilities available. No profit would be paid to the owners of the Atmore hospitals, it being understood that they would not share in the responsibility for the operation or the revenues paid by patients using the leased sections or wings of said hospitals.

"The Board recently voted at a regular meeting to request your opinion as to whether or not its proposed action in leasing and operating wings or sections of one or both of the Atmore hospitals is permissible under the constitutional amendment under which the special tax was voted and under the statutes under which the Board was incorporated and functions. As the representative of the Board charged with the duty of collecting, disbursing, handling or accounting for the funds raised by said special tax the undersigned requests that you give your opinion upon the legal question proposed in this letter.

"I hereby certify to you that the facts set forth show the nature and character of the question of law upon which the Board desires your opinion and I further certify that your advice thereon is necessary to the present performance of my official duties as Treasurer of the Board,

and which I must immediately perform, in that I must be informed whether or not I may legally disburse any of the funds raised through the levy of the special duties and coming into my hands for the leasing of wings or sections of Atmore hospitals and the operation of such wings as public hospital facilities under the Board."

Amendment No. LXX, Constitution of Alabama 1901, proclaimed ratified November 15, 1948, provides that Escambia County is authorized, subject to a vote of a majority of the qualified electors of the county, to levy and collect a special county tax "to be used solely for acquiring, by purchase, lease, or otherwise, constructing, operating, equipping, or maintaining county hospitals, non-profit hospitals and public health facilities."

You state that such election has been held, and that a special two mill tax has been levied. The question arising is whether the money derived from this special tax may be used by the Escambia County Hospital Board to lease portions of privately owned hospitals to be operated by said Board as public hospitals.

Act No. 46, General and Local Acts 1949, page 68, (Title 22, Sections 204 (18)-204(30), 1949 Cumulative Pocket Part, Code of Alabama 1940), under which the Escambia County Hospital Board was organized, provides, in Section 7 thereof, as follows:

"The corporation shall have the following powers, together with all powers incidental thereto or necessary to the discharge thereof in corporate form: . . . to receive, acquire, take and hold, whether by purchase, gift, lease, devise or otherwise, real and personal estate of every description, . . . to acquire, construct, equip, enlarge, improve, maintain, and operate a hospital, and to do all things necessary to that end; . . . to make rules and regulations for the treatment of charity patients and for the conduct of any hospital owned or operated by it"

It will be noted that both the Constitutional Amendment and Act No. 46, supra, provide for the acquisition of property by lease.

You state in your request that the operation of the leased portions of the privately owned hospitals would be entirely under the control of the Escambia County Hospital Board, and that the owners of the hospitals would not receive any profits nor share in the revenue or responsibility for the operation of the leased portions of said hospitals.

Under the facts stated in your request, it is my opinion that the Escambia County Hospital Board organized under Act No. 46, supra, may use money derived from the special tax levied pursuant to Amendment No. LXX, supra, to lease portions of privately owned hospitals to be operated by said Board as public hospitals.

Yours very truly,

SI GARRETT

Attorney General

January 30, 1952

Hon. M. G. Hale, Chairman

County Board of Revenue

Colbert County,

Tuscumbia, Alabama

Hospitals — Counties — Taxation.

Where a public corporation is created under authority of Act No. 46, General Acts 1949, page 68, for the purpose of "acquiring, owning, and operating public hospitals and other public health facilities in the county," the county governing body may legally transfer to the corporation any funds owned or controlled by the county which may have been raised or allocated for any of the purposes for which the corporation is organized.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion bearing date of November 20, 1951, is as follows:

"A hospital in Colbert County known as the Colbert County Hospital, was owned jointly by Colbert County, the City of Sheffield and the City of Tuscumbia. In December 1949, a hospital board was organized under Act No. 46 of the Legislature of Alabama, approved June 2, 1949 (General Acts of Alabama 1949, Pages 67-73) known as the Mize Act, the name of the Board being 'Colbert County Hospital Board.' The incorporation of the said Colbert County Hospital Board was carried out in accordance with said Act of the Legislature known as the Mize Act.

"On the 4th day of January, 1950, Colbert County, the City of Sheffield and the City of Tuscumbia joined in a deed conveying said hospital and all the property connected therewith to the said Colbert County Hospital Board, and of course the legal title to said property is now vested in the said corporation, the said Colbert County Hospital Board.

"The Board of Revenue of Colbert County has called a special election to be held in the County on December 11, 1951, to determine whether or not the County shall be authorized to issue and sell its hospital bonds on the credit of the County to the amount of \$150,000.00 for the purpose of raising funds to acquire, provide and erect a County hospital in the County. The ballot to be used in said election reads as follows:

"OFFICIAL BALLOT
SPECIAL COUNTY BOND ELECTION
COLBERT COUNTY, ALABAMA

DECEMBER 11, 1951

"Shall the County of Colbert in the State of Alabama issue on its credit not exceeding \$150,000 principal amount of its Hospital Bonds for

the purpose of raising funds to acquire, provide and erect a county hospital in the county, which bonds shall bear interest at a rate not exceeding 3% per annum payable semi-annually each six months after their date until their respective maturities, shall be numbered from 1 to 150, inclusive, shall be in the denomination of \$1,000 each, and shall mature and become payable on the anniversary date of the bonds in the principal amount of \$10,000 at the end of each year from the first to the fifteenth years, inclusive, after their date?

"Make a cross mark (X) before or after
the proposition expressing your choice.

"() FOR said proposed County of Colbert Hospital Bonds ()

"() AGAINST said proposed County of Colbert Hospital Bonds' ()

"Assuming that the issuance and sale of the bonds will be authorized at said election the Board of Revenue of Colbert County requests a ruling from you upon this question:

"Can the Board of Revenue of the County, after the proceeds of the sale of said bonds are received by the County Depository or County Treasurer, legally and properly transfer said funds to the said Colbert County Hospital Board to be expended by the said Colbert County Hospital Board for the purpose of enlarging and improving the said hospital owned by the said Corporation, the said Colbert County Hospital Board?

"We also desire to request a ruling from you upon the following question:

"By local Act of the 1947 Legislature, No. 268, approved August 8, 1947 a privilege license tax was levied on the sale of beer in Colbert County. This Act, in Section 9, allocates two-fifths of the revenue arising from the tax to the 'Hospital Fund for Colbert County.' Since the Act has been in effect the Probate Judge, who collects the tax has each month paid this two-fifths share into the County Treasury or County Depository, and the County Depository has carried the funds in a special account known and designated as 'Hospital Fund for Colbert County.'

"From the collection of this tax there has accumulated in this 'Hospital Fund for Colbert County' approximately \$65,000.00.

"Can the Board of Revenue of Colbert County, Alabama, legally and properly transfer the funds in this special account known as the Hospital Fund for Colbert County, which has accumulated from said beverage tax, to the said Colbert County Hospital Board to be expended by it to aid in the enlargement and improvement of the said hospital owned by the said Corporation and known as the Colbert County Hospital?

"We will greatly appreciate a ruling from you upon these questions at an early date."

It is by information that in the election held on December 11, 1951, the vote was in favor of the issuance of the hospital bonds by Colbert County.

The corporation known as the Colbert County Hospital Board, as you have stated in your request, is a public corporation organized under authority of Act No. 46, General Acts 1949, page 68. This act specifies that such corporation may be organized "for the purpose of acquiring, owning, and operating public hospitals and other public health facilities in the county in which such corporation shall be organized." Under Section 7 of said act, the hospital board is given the power "to acquire, construct, equip, enlarge, improve, maintain, and operate the hospital, and to do all things necessary to that end."

The purpose of the above act is to provide for an independent agency of the county which will supervise the operation of hospitals and other health facilities of the county. Recognizing the necessity of assisting the hospital board with public funds in order that the hospital may be able to continue rendering services in a manner most advantageous to the inhabitants of the county, it was provided in Section 13 of Act No. 46, supra, as follows:

"Section 13. Transfer of Funds and Property by Counties and Municipalities. The county in which the corporation is organized and any municipality located within such county are hereby authorized to transfer and convey to the corporation, without consideration, any hospital that may be owned by such county or municipality, as the case may be and any funds owned or controlled by such county or municipality, as the case may be, that may have been raised or allocated for any of the purposes for which the corporation shall have been organized; provided, that such transfer or conveyance shall be authorized by an ordinance or a resolution duly adopted by the governing body of such county or municipality."

The above provisions in broad terms authorize the transfer of "any funds owned or controlled" by the county which "may have been raised or allocated for any of the purposes for which the corporation (county hospital board) shall have been organized." Since both the proceeds of the sale of the contemplated bond issue and the amount accumulated in the "Hospital Fund for Colbert County" from the beer tax levied by Act No. 268, Local Acts 1947, page 194, are to be used by the Colbert County Hospital Board for purposes enumerated in Act No. 46, supra, I, therefore, conclude that these funds may properly be transferred to the Colbert County Hospital Board to be expended by it in the enlargement and improvement of its hospital.

Yours very truly,

SI GARRETT

Attorney General

February 5, 1952

Hon. A. B. Jefferies, Chairman

Revenue and Road Commissioners

Mobile County

Mobile, Alabama

Civil Defense — Counties — Funds.

1. Act No. 14, Special Session 1951, General and Local Acts 1951, page 180, is the basic authority for establishment of a local civil defense agency. Establishment of such an agency is mandatory.

2. A county, and cities and towns therein, may form one common civil defense agency.

3. A county may appropriate funds for civil defense.

4. A county may either appropriate money to a civil defense fund for expenditure by the director of the civil defense agency, or may expend funds on behalf of such director.

5. A county is under no obligation to establish a Civil Defense Council.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion, bearing date of December 3, 1951, is as follows:

"The organization of a civil defense program in Mobile County is considered an important matter, and in attempting to carry out the legislative program this Board is in need of your opinion and advice as follows:

"1. What are the basic applicable laws and authority for the establishment of a local civil defense agency and program in this county, and is the establishment of such agency and program a discretionary or mandatory matter?

"2. Whether the local civil defense program is a discretionary or mandatory function, may the governing body of Mobile County lawfully join with the governing bodies of each city and town in this County in the formation of one civil defense agency and program to perform the duties and functions of civil defense in this County?

"3. May this governing body of Mobile County lawfully appropriate funds for Civil Defense in this County?

"4. Assuming this Board's lawful right to appropriate its public funds for civil defense purposes, may such public funds be lawfully paid over to the local Defense Director, or local Civil Defense Council, for expenditure, or must this governing body first audit and allow the claims which must be filed, as now required by law, with this Board, for purposes and/or salaries growing out of the civil defense program?

"5. Is it obligatory that a Civil Defense Council for Mobile County be created? If so, and assuming the city's and county's right to create one local civil defense program in Mobile County, advise how and in what manner such Defense Council shall be here created.

"In answering these questions, you are respectfully requested to submit such additional information and advice in the premises as shall by you be deemed proper."

You have asked several questions which I shall answer seriatim.

1. The basic applicable law for the establishment of a local civil defense agency in Mobile County is Act No. 14, Special Session 1951, General and Local Acts 1951, page 180. This act provides in Section 9 (a) that each political subdivision of this state is "authorized and directed to establish a local organization for civil defense in accordance with the State civil-defense plan and program." The words "authorized and directed" have been held to mean "ordered." *People v. Guggenheimer*, 59 N. Y. S. 913, 28 Mis. 735. Therefore, it is my opinion that the establishment of a local civil defense organization in Mobile County is mandatory.

2. Section 19 of Act No. 14, supra, provides that "This Act shall be construed liberally in order to effectuate its purposes."

Section 2 (b) of Act No. 14, supra, provides as follows:

"It is further declared to be the purpose of this Act and the policy of the State that all civil defense functions of this State be coordinated to the maximum extent with the comparable functions of the Federal Government including its various departments and agencies, of other States and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the Nation's manpower, resources, and facilities for dealing with such disaster or emergency."

Section 8 of Act No. 14, supra, states that local organizations may enter into reciprocal agreements with other public and private agencies to provide for mutual aid and assistance.

Section 9 (a) of the Act provides in part as follows:

"... Each organization for civil defense shall perform civil-defense functions within the territorial limits of the political subdivision within which it is organized, and in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this Act."

Therefore, although the act does not specifically state that a county, such as Mobile County, and the cities and towns located therein, may form one organization, it is my opinion that such an arrangement would be permissible if it enhanced the effectiveness of the entire program.

3. Your third question is answered in the affirmative. Section 9(b) (1) provides, inter alia, that each political subdivision has authority to appropriate and expend funds in accordance with the policies of the Federal and State Civil Defense agencies. A "political subdivision" includes a county. Section 9(a), Act No. 14, supra.

4. Section 9(b) (1) of Act No. 14, supra, as stated above, provides that political subdivisions may appropriate and expend funds for civil defense purposes. Section 9 (b) (5) of Act No. 14, supra, provides as follows:

"In the event of enemy attack or state of emergency as provided in section . . . and in furtherance of the purpose of this Act, to waive procedure and formalities otherwise required by law pertaining to: the performance of public work entering into contracts, the incurring of obligations, the employment of temporary workers, the utilization of volunteer workers, the rental of equipment, the purchase and distribution with or without compensation of supplies, materials, and facilities, and the appropriation and expenditure of public funds."

In view of the above provisions, it is my opinion that Mobile County, by following the normal procedures required by law for "appropriation" of funds, may appropriate money to a civil defense fund for expenditure by the director of the civil defense agency. However, if the county so desires it may follow the normal procedures required by law for "expenditure" of funds, and require an audit and allowance of claims against the county. Either method is legal under the present law. During enemy attack or state of emergency, the county is authorized to waive procedure and formalities required by law for appropriation and expenditure of funds.

5. While, as stated above, it is mandatory for the county to set up a civil defense program, it is not obligatory for the county to create a Civil Defense Council. Such council is only mandatory in the case of the state organization, Section 5, Act No. 14 supra.

Yours very truly,

SI GARRETT

Attorney General

February 13, 1952

Honorable Wm. J. Samford

Attorney, Alabama Polytechnic Institute

Samford Building

Opelika, Alabama

Mobile County — School Lands

1. The Board of School Commissioners of Mobile County may lease sixteenth section lands in Mobile County without such lease being executed by the Director of Conservation with the approval of the Superintendent of Education and the Governor of the State of Alabama.

2. The opinion to Dr. Walter B. Jones, Director of Conservation, dated February 14, 1940, and found in Quarterly Report of Attorney General, Vol. 18, page 204, was in effect overruled in the case of *Morgan v. Board of School Commissioners of Mobile County*, 248 Ala. 22, 26 So. 2d 108.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion, bearing date of December 3, 1951, is as follows:

"IN RE: Acquisition of Section 16
Land in Mobile County

"Dr. Ralph B. Draughon, President of the Alabama Polytechnic Institute, has requested that I obtain a ruling from you concerning the following question:

"May a valid lease to Section 16 school lands in Mobile County be taken by The Alabama Polytechnic Institute executed only by the Board of school Commissioners of Mobile County, for a term of years in excess of 20 without such lease being executed by the Director of Conservation with the approval of the Superintendent of Education and the Governor of the State of Alabama?

"I attach some information and citations for your convenience.

"I agree with Mr. Palmer Pillans, Attorney for the Board of Commissioners of Mobile County, that the answer to the above question is in the affirmative. However, Dr. Draughon would like to have your opinion concerning the matter before appropriated funds are used to conduct experiments relating to azalea and camellia growth on Section 16 land in Mobile County."

By Act No. 35, Acts 1836, page 48, the direction, management, and control of school lands in Mobile County was placed in the Mobile School Commissioners, predecessors of the Board of School Commissioners of Mobile County. The Legislature of Alabama reaffirmed that control, direction, and management in Act No. 307, Acts 1853-54, page 190. I quote from Section 2 of this Act:

"SEC. 2. Be it further enacted, That the board of Mobile school commissioners as now organized and existing, and their successors under the operation of the said acts, shall have power and authority to establish and regulate a system of public schools in said county, and to devise, put in force and execute such plans for the increase of knowledge, educating youth and promoting the cause of learning in said county as to them may appear expedient; and all lands, grants and immunities already conferred, or which may hereafter be conferred upon the inhabitants of said county, or any city, town or township therein, for purposes of education, either by the United States, this state, or otherwise, shall be under the control, direction and management of said commissioners. ."

Your attention is invited to Section 270, Constitution of Alabama 1901, which provides as follows:

"Sec. 270. The provisions of this article and of any act of the legislature passed in pursuance thereof to establish, organize, and maintain a system of public schools throughout the state, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw the portions of the funds to which said county shall be

entitled for school purposes and to make reports to the superintendent of education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the legislature; provided, that separate schools for each race shall always be maintained by said school authorities."

Title 8, Sections 232-252, Code of Alabama 1940, as amended by Act No. 385, General Acts 1945, page 604, confers upon the Department of Conservation the complete management of and supervision over certain public lands, including school lands.

In the case of **Morgan v. Board of School Commissioners of Mobile County**, 248 Ala. 22, 26 So. 2d 108, the Supreme Court of Alabama, in considering Act No. 581, General Acts 1939, page 949 (codified as Title 8, Sections 232-252, Code of Alabama 1940), in the light of Section 270, Constitution of Alabama 1901, held that Acts No. 35 and No. 307, supra, were not repealed by said Act No. 581, and the codification thereof. The Court further held that the direction, management, and control of school lands in Mobile County remained in the Board of School Commissioners.

At the time the **Morgan** case, supra, was decided, Title 47, Section 55, Code of Alabama 1940, as amended by Act No. 597, General Acts 1943, page 612, required the written approval of the Governor on all leases of real estate for more than one year made by any department, Commissioner, or other agency of the State. This section was not dealt with expressly in the **Morgan** case, but I am of the opinion that the reasoning of that case as applied to Sections 232-252 of Title 8, supra, would be equally applicable to Section 55 of Title 47, as amended, supra, insofar as that section relates to leases of school lands in Mobile County.

Therefore, in answer to your specific question, it is my opinion that the Board of School Commissioners of Mobile County may lease sixteenth section lands in Mobile County to the Alabama Polytechnic Institute for a term in excess of twenty years, without such lease being executed by the Director of Conservation with the approval of the Superintendent of Education and the Governor of the State of Alabama.

The opinion to Dr. Walter P. Jones, Director of Conservation, dated February 14, 1940, and found in Quarterly Report of Attorney General, Vol. 18, page 204, was in effect overruled in the case of **Morgan v. Board of School Commissioners of Mobile County**, supra.

Yours very truly,

SI GARRETT

Attorney General

February 14, 1952

Hon. Lawrence A. May

First Assistant

State Service Commissioner

Department of Veterans' Affairs

C A P I T O L

Veterans — Exemptions — Licenses.

1. The period within which a veteran may serve in the armed forces of the United States and thereby become eligible for exemptions under the provisions of Act No. 553, General Acts 1945, page 570, as amended by Act No. 698, General Acts 1947, page 535, is a ninety-day period between September 16, 1940, and the termination of World War II by the signing of a definite treaty of peace.

2. A definitive treaty of peace not having been signed by the United States and Germany, the period within which a veterans may serve in the armed forces for ninety days has not terminated, and veterans completing ninety days' service before the signing of a definitive treaty of peace with Germany, if otherwise eligible, are entitled to exemptions under Act No. 353, as amended, supra.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, dated December 12, 1951, is as follows:

"Reference is made to Alabama Act No. 698, General Acts 1947, which amends Act 353, General Acts 1945. Section 1 of Act 698 provides in part as follows:

"Every bona fide permanent resident of the State of Alabama who has served 90 days or more in the armed forces of the United States between September 16, 1940, and the termination of World War II by the signing of a **definitive treaty of peace** shall, upon sufficient identification, and upon sufficient proof of being a permanent resident of this State, and upon the production of an honorable discharge from or other proof of the honorable termination of such service, be exempt from business or occupational license taxes for a period of six years after the effective date of this Act or for a period of six years after his or her discharge from or termination of service whichever is later, to the extent and subject to the conditions herein specified.' (Underscoring supplied).

"A definitive treaty of peace was entered into with Japan on September 9, 1951. President Truman signed a Congressional resolution on October 19, 1951 ending the state-of-war with Germany but according to our definite information there has **not** been a termination of World War II with Germany by the **signing of a definite treaty of peace**.

"This Department would appreciate your official opinion as to whether or not a veteran who has served 90 days or more in the armed forces

of the United States after July 6, 1945 (approval date of Act 353), or a veteran who now serves 90 days before the signing of a definitive treaty of peace with Germany, and who meets the other requirements of the Act, would be eligible for the exemptions for a period of six years after his or her discharge from or termination of service."

This office has heretofore rendered an opinion construing certain provisions of Act No. 353, General Acts 1945, page 570, as amended by Act No. 698, General Acts 1947, page 535, the acts referred to in your inquiry. Quarterly Report of Attorney General, Vol. 60, page 100.

Your inquiry is answered in the affirmative.

The Legislature, in setting forth the requirements that a veteran must meet before being entitled to the exemptions granted by Act No. 353, as amended, *supra*, defined the period within which such veteran must have served in the armed forces. The period of service required to be performed as a condition precedent to eligibility for exemptions, under the acts referred to in your inquiry, is a ninety-day period between September 16, 1940, and the date of "the termination of World War II by the signing of a definitive treaty of peace." This office is advised that there has been no signing of a definitive treaty of peace with Germany. It results, therefore, that the period within which a bona fide resident of this State may serve ninety days in the armed forces of the United States and thereby satisfy this requirement for being eligible for exemptions has not yet expired; and a veteran who has served ninety days or more at the present time, and since September 16, 1940, if otherwise eligible for exemptions, would be eligible for exemptions under the acts referred to in your inquiry. Furthermore, a veteran who shall serve ninety days in the armed forces between now and the signing of a definitive treaty of peace with Germany, and who also meets other requirements of the acts referred to in your inquiry, would be eligible for the said exemptions.

Yours very truly,

SI GARRETT

Attorney General

February 14, 1952

Honorable Jim Petree

City Attorney

Walker County

Jasper, Alabama

Insurance — Licenses — Municipalities — Taxation.

A license or privilege tax levied under Title 37, Section 739, Code of Alabama 1940, may be collected only on gross premiums, less return premiums, on fire and marine insurance issued on property located in the municipality.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion bearing date of October 16, 1951, is as follows:

"The Board of Commissioners of the City of Jasper have asked that we request your official opinion regarding the following matter. The Service Fire Insurance Company of New York does a considerable volume of business in this city. This company sells fire insurance, collision insurance and liability and property damage insurance, and in past years have not paid a privilege license to the city of Jasper. The city has an ordinance based upon Section 739 of Title 37 of the 1940 Code of Alabama whereby a privilege license is levied against all fire insurance companies doing business in the city in the amount of four per cent on each one hundred dollars or major fraction thereof, of gross premiums, less return premiums, on policies issued during the preceding year in the city. In the past the city has always collected under this ordinance from all fire insurance companies doing business in the City the full four percent on gross premiums of all insurance written by the company, whether the insurance be all fire insurance or partly fire insurance and partly theft or collision insurance.

"The Service Fire Insurance Company of New York contends that they should pay four per cent on their fire premiums but should only pay one percent on the gross premiums of all theft or collision or other insurance written by their company.

"We shall thank you to give us your official opinion on the following:

1. Under a City Ordinance based upon Section 739 of Title 37 of the 1940 Code of Alabama, can a municipality legally charge a fire insurance company doing business in the city a privilege license in the amount of four per cent on each one hundred dollars, or major fraction thereof, of the gross premiums of all insurance written by said fire insurance company whether the insurance be fire, theft, collision or other insurance, or is the City restricted to charging the full four percent only on the gross premiums of the fire insurance sold by said fire insurance company?

"It may be that you will need copies of our city ordinances pertaining to this matter and if you do we shall be glad to forward them.

"I might say that during the tax year the Service Fire Insurance Company of New York had gross premiums from fire insurance sold in the city in the amount of \$2,743.29, and on this amount they offer to pay the four per cent required by our ordinance. The insurance sold by this company during the same time in the city of Jasper, amounted to gross premiums of \$14,648.93 and on this amount they seek to pay only one per cent as provided for under our ordinance based upon Section 736 of Title 37, 1940 Code of Alabama."

Title 37, Section 739, Code of Alabama 1940, provides in part as follows:

"No license or privilege tax or other charge for the privilege of doing business shall be imposed by any municipal corporation upon any fire or marine insurance company doing business in such municipality, except upon a percentage of each one hundred dollars of gross premiums,

less return premiums, on policies issued during the preceding year on property located in such municipality. Such percentage shall not exceed four percent on each one hundred dollars or major fraction thereof, of such gross premiums: ”

Title 37, Section 736, Code of Alabama 1940, provides in part as follows:

“No license or privilege tax, or other charge for the privilege of doing business, shall be imposed by any municipal corporation upon any insurance company, other than fire and marine insurance companies, doing business therein or its agents, which shall exceed for the company and its agents the following amounts: ” (Then follows a schedule of amounts.)

In *People v. Commercial Union Fire Insurance Company*, 322 Ill. 326, 153 N. E. 488, it was held that an act providing that all foreign corporations engaged in effecting fire insurance should pay a certain percentage of gross receipts to the municipality, did not apply to premiums collected on policies combining fire insurance with other types of insurance unless the premiums for the fire insurance could be separately specified.

Following the reasoning of the above cited case, and because of the fact that provision has been made for license payments by companies other than fire and marine companies in Section 736, *supra*, it is my opinion that the license or privilege tax levied under the authority of Section 739, *supra*, applies only to the gross premiums, less return premiums, on fire and marine insurance policies written by a given company. If the same company writes other insurance in the municipality, the tax should be governed by Section 736, *supra*.

Yours very truly,

SI GARRETT

Attorney General

February 14, 1952

Hon. E. C. Hudson

Probate Judge and Chairman of Board of Revenue

Blount County

Oneonta, Alabama

Counties — Schools — County Boards of Education — Libraries.

Under the provisions of Title 52, Section 207, Code of Alabama 1940, the county governing body is authorized to appropriate general funds of the county to the county board of education for the purpose of purchasing books and supplies for a public school library under the jurisdiction and supervision of the said board.

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion, bearing date of January 23, 1952, is as follows:

"Please render your official opinion at your very earliest convenience on the following:

"The Blount County School System has its library for the use of the various schools over the County. The Board of Education has made an appeal to the Board of Revenue for an Appropriation to buy books and supplies for said library, and the said Board is very anxious to make the Appropriation in the amount of \$500.00. Since the said library is under jurisdiction and supervision of the Superintendent of Education and the Board of Education, can the Board of Revenue of Blount County make this Appropriation directly to the Board of Education for the purpose of further equipping it with books and supplies?"

In my opinion, your inquiry should be answered in the affirmative.

Title 52, Section 207, Code of Alabama 1940, provides that:

"The courts of county commissioners or boards of revenue of the several counties of Alabama are authorized at any meeting of said court in any calendar year to appropriate any funds they may deem proper and expedient out of the general funds of the county treasury for the support of the public schools within said county."

In previous opinions of this office, the conclusion was reached that this section authorizes an appropriation of county funds to any public school for specific school purposes to be decided upon by the county governing body. See opinions of Attorney General, Office Edition, Vol. 16, page 220, Biennial Report of Attorney General, 1932-1934, page 195; Biennial Report of Attorney General, 1934-1936, page 616; and Quarterly Report of Attorney General, Vol. 18, page 301.

It has heretofore been held that this section authorizes an appropriation from the general fund of the county for the purchase of athletic equipment for physical training of students in public schools. See Biennial Report of Attorney General, 1936-1938, page 3.

It has been held that this section authorizes an appropriation by the county governing body, from its general fund, for the purpose of supplementing the salaries of the teachers of vocational agriculture in the high schools of the county. See Quarterly Report of Attorney General, Vol. 32, page 14.

This office has also ruled that this section is legal authority for an appropriation, by the county governing body, to the county board of education for the purpose of improving the interior lighting facilities in public school buildings. See Quarterly Report of Attorney General, Vol. 40, page 9.

Section 207, *supra*, also has been held to authorize an appropriation, from the general funds of the county, for the purpose of purchasing musical instruments for the band of public high schools, both county and city. See Quarterly Report of Attorney General, Vol. 51, page 102, Quarterly Report of Attorney General, Vol. 53, page 16.

It is my opinion, therefore, that the Board of Revenue of Blount County may, in its descretion, appropriate out of its general fund the sum of \$500.00, or such other sum as it considers proper, directly to the county board of education for the purpose of purchasing books and supplies for the public school library under the jurisdiction and supervision of the said board.

Yours very truly,

SI GARRETT

Attorney General

February 14, 1952

Honorable Lawrence A. May

First Assistant

State Service Commissioner

Department of Veterans' Affairs

Montgomery 2, Alabama

Colleges and Universities—University of Alabama — Veterans.

A course of study offered at the University of Alabama Center is an "extension" course within the meaning of Section 4, Act No. 47, General and Local Acts 1951, approved 1951, page 259.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion, bearing date of October 2, 1951, is as follows:

"Section 4 of Act No. 47, regular session, 1951, provides that certain veterans shall be entitled to take any extension or correspondence course from any State college or university offering same, without the payment of any fees or charge for such extension or correspondence course.

"Will you please give this Department your opinion as to whether or not a course of study at a University of Alabama Center would be considered an 'extension course' in this connection."

Section 4 of Act No. 47, General Acts 1951, page 259, provides in substance that bona fide permanent resident veterans who meet certain requirements shall be "entitled to take any extension or correspondence course from any State college or university offering same . . ." without payment of fees or charges for said course.

The words of a statute should be given their ordinary meaning unless it appears from the context or otherwise that a different sense was intended. **Pullman Standard Car Manufacturing Company v. State**, 253 Ala. 638, 46 So. 2d 500.

Nothing appears in the context of Act No. 47, supra, to indicate that the word "extension" should be given any meaning but the ordinary meaning. Turning to Webster's New International Dictionary (2nd Ed.) Unabridged, we find "university extension" defined as follows:

"Originally, extramural instruction, primarily for the working classes, conducted by a university or college; now, broadly, any similar instruction, as by a State board of education for the general public."

"Extramural" is defined in the same authority as:

"2. Conducted or coming from outside the precincts (of a given institution); said of educational facilities, etc."

It is my opinion that a course of study given at a University of Alabama Center, which is outside the precincts of the University itself, is an "extension" course as contemplated in Section 4 of Act 47, supra.

Yours very truly,

SI GARRETT,

Attorney General

February 14, 1952

Hon. R. P. McRee

Administrator

Alabama Alcoholic Beverage Control Board

Montgomery 2, Alabama

Alabama Alcoholic Beverage Control Board — Intoxicating Liquors.

Licensed agents, brokers, or salesmen, engaged in selling or soliciting sales of alcoholic liquors, and representing the manufacturers, distillers, producers, or distributors of such liquors, lawfully may transport necessary samples, reasonable in quantity, in and about their sales territory, from a "wet" county within the State to another "wet" county therein, though such transportation must proceed through one or more "dry" counties of the State.

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion, bearing date of June 25, 1951, is as follows:

"We have received numerous inquiries from representatives of distillers and vintners relative to transporting, through dry counties, samples used by them in promoting their business.

"On July 10, 1939, an opinion was rendered Honorable J. B. Kirby, Sheriff of Hale County, which held that the ABC Board could legally transport alcoholic beverages from its warehouse in a wet county, through a dry county to a State Liquor Store in another wet county, for sale from said State Liquor Store.

"The same opinion held that wholesalers or distributors of malt or brewed beverages, duly licensed as such, could legally transport such beverages from their warehouses in a wet county, through a dry county, for delivery to duly licensed retail dealer in such beverages in a wet county, for sale by such retail dealer in accordance with the provisions of the Alabama Beverage Control Act.

"It will be appreciated very much if you will advise me whether or not a liquor or wine representative would be violating the law in transporting his samples from one wet county through a dry county into another wet county."

I am of the opinion that your inquiry should be answered in the negative.

It is true that the appellate courts of our State have construed the law to be that the possession of whiskey in a so-called "dry" county of our State, even though lawfully purchased from a legally authorized selling agency, such as a State Liquor Store, or so-called "Green Front Store," is illegal; and that the possession, or other traffic in intoxicating liquors, however acquired, in a "dry" county is unlawful. **Williams v. State**, 28 Ala. App. 73, 179 So. 915 (cert. den. 235 Ala. 520, 179 So. 920); **Nerland v. State**, 28 Ala. App. 137, 179 So. 921; **Johnson v. State**, 29 Ala. App. 276, 196 So. 151 (cert. den. 239 Ala. 611, 196 So. 153); **Hall v. State**, 30 Ala. App. 373, 6 So. 2nd 30; **Stephens v. State**, 33 Ala. App. 469, 34 So. 2d 508; **Howell v. City of Fort Payne**, 246 Ala. 315, 20 So. 2d 880. See, also, Title 29, Sections 68, 93, and 98, Code of Alabama 1940.

It is also true that in **Williams v. State**, supra, the Court of Appeals expressed the opinion that the Alcoholic Beverage Control Act (Act No. 66, General and Local Acts, Extra Session, 1936-1937, page 40, codified as Title 29, Sections 1-78, Code of Alabama 1940), which became law on February 2, 1937, notwithstanding veto, was applicable solely to the "wet" counties of this State. This opinion was, however, later modified by the Supreme Court in its decision in **Newton v. State**, 30 Ala. App. 42, 200 So. 431; 241 Ala. 1, 200 So. 428.

In **Newton v. State**, supra, it was decided that the said act does not apply solely to the "wet" counties of the State, but such features thereof as were evidently intended to apply to "dry" counties are applicable therein. To the same effect is the holding in **Holt v. State**, 29 Ala. App. 100, 193 So. 98; 238 Ala. 2, 193 So. 89. The act does, therefore, have a field of operation in "dry" counties, to the extent that it does not conflict with existing laws suppressing the evils of intemperance.

As pointed out in **Newton v. State**, supra, the act must be given a reasonable construction "to comport with the legislative intent found within the four corners of the act." Mr. Justice Foster points out in **Holt v. State**, supra, that the said act "should not be controlled by any certain isolated extracts from it, but rather by a study of the animating current which permeates it." The act gives the Alabama Beverage Control Board authority to make regulations, not inconsistent with the act, as it deems necessary for carrying out the provisions of the act. See Title 29, Section 6, Code of Alabama 1940.

In *Newton v. State*, supra, it was concluded that, under a reasonable interpretation of the act, it is lawful for **qualified agents or agencies** in good faith to transport liquors and beverages, duly authorized to be sold and transported under the act and the Board's rules and regulations, in intrastate commerce from a "wet" county within the State to another "wet" county therein, even though such transportation must proceed through one or more "dry" counties of the State. See, also, Quarterly Report of Attorney General, Vol. 16, page 13.

An agent, broker, salesman, or other person engaged in selling alcoholic liquors, soliciting sales of such liquors, or acting as broker for anyone selling such liquors, is required to be licensed by the said Board, as a condition precedent to his doing business in this State, and the Board is forbidden to buy from an unlicensed person. Act No. 298, General Acts 1947, page 149 (codified as Title 29, Sections 12(1) — 12(5), 1949 Cumulative Pocket Part, Code of Alabama 1940).

Since such a so-called "liquor agent" of any manufacturer, distiller, producer, or distributor of alcoholic liquors is a licensee of the said Board, it is my opinion that, for the purpose of transporting necessary samples of such liquors, reasonable in quantity, in and about his sales territory in this State, under the Board's rules and regulations, he is a "qualified agent or agency," within the meaning of the Supreme's Court's decision in *Newton v. State*, supra; and that, therefore, he may lawfully transport such samples from one "wet" county within the State to another "wet" county therein, even though such transportation must proceed through one or more "dry" counties of the State.

Yours very truly,

SI GARRETT

Attorney General

February 14, 1952

Dr. D. G. Gill,

State Health Officer,

Department of Public Health,

C A P I T O L

Counties — Hospitals — Funds — Constitutional Amendments.

The proceeds from the sale of bonds pursuant to Amendment 74 to the Constitution of Alabama 1901, cannot be used to aid counties in the construction of hospitals, unless these funds are matched by federal funds.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion bearing date of August 15, 1951, is as follows:

"When there are no federal funds immediately available for hospital construction and a county has its part of resources with which to proceed to provide itself with a hospital, is it permissible under Amendment LXXIV of the State Constitution for the state to contribute toward the cost of such construction? There is a community sorely in need of hospital facilities that is prepared to build a hospital if it can have aid under the amendment referred to.

"Your opinion in the matter is respectfully sought."

I am of the opinion that the funds obtained by the state pursuant to Amendment 74 to the Constitution of Alabama 1901 may not be used to match county funds for the purpose of constructing a hospital where federal funds are not presently available.

The Constitution of Alabama 1901, Amendment 74, provides in part as follows:

"The proceeds from the sale of such bonds are hereby appropriated and shall be used solely for the construction of hospitals and hospital facilities pursuant to Act No. 211, S. 107, approved July 7, 1945 (General Acts of Alabama, 1945, page 303, or any act supplemental thereto or amendatory thereof; provided, **that the funds shall be used to match federal funds available for hospital, clinic or health center purposes**, and that the local governments in the area where each hospital, clinic or health center is to be built shall contribute at least as much money for the construction as does the state; and provided further that the state shall not contribute more than three hundred fifty thousand dollars (\$350,000) to the construction of any one hospital, clinic or health center." (emphasis supplied)

A definition of the word "match," as found in Webster's New International Dictionary, (2nd Ed.) Unabridged, is as follows:

"5. To make equal, proportionate, or suitable; to adapt, fit, or suit (one thing to another)."

With this definition in mind, the ordinary interpretation of the word "match" would be that the state funds would be used, in a proportionate amount, to augment federal funds, when they are available. In other words the state funds, obtained under Amendment 74, cannot be used when federal funds are not available. In 11 Am. Jur., Constitutional Law, Section 64, p. 678, this statement is found:

"When the words of a man express his meaning plainly, distinctly, and perfectly, there is no occasion to have recourse to any other means of interpretation."

The court in **Mills v. Porter**, 69 Mont. 325, 222 U. 428, had this to say about the interpretation to be given constitutions and constitutional amendments:

"The interpretation to be given a constitutional provision is that which reasonable minds—the great mass of the people themselves—would give it. . . ."

Following the above cited authorities, a reasonable interpretation of Amendment 74 to the Constitution of Alabama 1901, is that state funds must be **matched** by federal funds; otherwise the money cannot be used to aid in the construction of hospitals in the State of Alabama.

Therefore, it is my opinion that the proceeds from a sale of bonds pursuant to Amendment 74 to the Constitution of Alabama 1901 cannot be used to aid counties in the construction of hospitals, unless these state funds are matched by federal funds.

Yours very truly,

SI GARRETT,
Attorney General

February 14, 1952

Hon. Charles Thomason

County Attorney

Calhoun County

Anniston, Alabama

Tax Assessors — Tax Collectors — Commissions — Calhoun County.

Under the provisions of Act No. 218, General and Local Acts 1951, page 490, placing the Tax Assessor and the Tax Collector of Calhoun County on a salary basis and reserving to said officers the fees, commissions and allowances "earned by the Tax Collector and Tax Assessor for the tax year ending September 30, 1951," the Legislature intended to reserve all fees, commissions and allowances in respect to taxes for the tax year ending September 30, 1951, regardless of when said taxes were assessed or collected.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of December 27, 1951, is as follows:

"At the request of J. Fred Gurley, Tax Collector of Calhoun County, I am asking for a legal interpretation of Section 2 of Act No. 218, House Bill 586, approved July 17, 1951.

"It was my opinion, as County Attorney for Calhoun County, that the proviso in Section 2 of Act No. 218 was intended to allow both the

Tax Collector and Tax Assessor to be paid their fees and commissions on the taxes for 1951, regardless of when they were assessed or collected. This also was the opinion of the local legislative delegation who introduced and passed the local Act No. 218."

It is my opinion that the tax collector and tax assessor of Calhoun County are entitled to be paid their fees and commissions on taxes for 1951, regardless of when said taxes were assessed and collected.

Act No. 218, General and Local Acts 1951, page 490, approved July 17, 1951, places both the tax assessor and the tax collector of Calhoun County on a salary, and makes provision for their clerk hire allowance. This act was passed pursuant to authority granted in Amendment No. XXXIII of the Constitution of Alabama 1901. Section 2 of Act No. 218, supra, requires that all fees, commissions, allowances, percentages, charges and costs collected by the county officers enumerated in said act, including the tax assessor and tax collector, shall be paid into the general fund of the county. Section 2 further provides as follows:

" . . . provided, that this Section shall not be applicable to fees, commissions, allowances, percentages, or charges earned by the Tax Collector and Tax Assessor for the next year ending September 30, 1951."

Act No. 218, supra, is made immediately effective by the terms of Section 6 thereof. Since Act No. 218 was approved July 17, 1951, it became effective on that date. The proviso in Section 2, however, indicates that it was the intention of the Legislature to allow the tax collector and tax assessor all of their fees, commissions, and other compensation which they had earned in respect to taxes for the tax year ending September 30, 1951.

The commissions of the tax assessor and tax collector are computed on the basis of taxes collected and not taxes merely assessed. Opinion to Honorable T. L. Johnson, Jr., Tax Collector, Walker County, under date of September 18, 1951 (Ms.); Quarterly Report of Attorney General, Vol. 60, page 19; Title 51, Section 191, Code of Alabama 1940. In my opinion, however, the Legislature, in placing the tax assessor and tax collector of Calhoun County on a salary basis as of July 17, 1951, did not intend to deprive those officers of their fees, commissions, and allowances in respect to taxes for the tax year ending September 30, 1951, although some of those taxes may not be assessed or collected upon the effective date of Act No. 218, supra. The Legislature in using the term "earned by the Tax Collector and Tax Assessor for the tax year ending September 30, 1951," in my opinion, meant "earned by the tax collector and tax assessor in respect to taxes for the tax year ending September 30, 1951."

Yours very truly,

SI GARRETT,

Attorney General

February 14, 1952

Hon. Joe M. Edwards

Commissioner of Revenue

Department of Revenue

C A P I T O L

Licenses.

A fortune teller must procure a State and County license in each county in which he does business.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion, bearing date of October 4, 1951, is as follows:

"There appears to be considerable confusion in the state among some of the Probate Judges concerning the construction of Title 51, Section 528, Code of Alabama 1940, and commonly known as the fortune tellers or palmists license. This confusion has especially arisen since Title 51, Section 831, Code of Alabama 1940, was amended effective September 5, 1951, by Act No. 700 of the 1951 Regular Session.

"The amendment inserted into Section 831 the following clause which was taken out of this Section when it was previously amended in 1943, to-wit:

"(a) Whenever a license is levied in this title there shall be collected both a state and county license for each place of business except as specifically otherwise provided.'

"Section 528 levies the fortune teller license as follows:

"For each fortune teller, palmist, clairvoyant, astrologer, phrenologist or crystal gazer, where any fee is charged directly or indirectly, or any gratuity is accepted, forty dollars.'

"Under Section 831, as last amended, it is the contention of some of the Probate Judges that the state license is required of these fortune tellers in each county in which they do business. Other Probate Judges contend that this is a personal or professional license, and that under the circumstances only one state license is required for the fortune teller to do business throughout the state.

"Due to such conflict in the interpretation of this statute, I request your official opinion as follows:

"(1) In construing Section 528, in the light of Section 831 as last amended, is one state license sufficient for a fortune teller to do business throughout the state, and in each county in this state.

"(2) Is a state license due in each county of the state that a fortune teller does business.

"(3) In the event that there is only one state license due, will there be a county license due in each additional county in which such fortune teller does business.

"In view of the fact that this is a matter of considerable public interest, and the new fiscal year has already commenced, we request that you please give this matter your usual prompt attention."

Act No. 700, General and Local Acts of 1951, page 1207, amended Title 51, Section 831, Code of Alabama 1940, as previously amended by Act No. 546, General Acts 1943, page 535. The provision in question, I.E., "Whenever a license is levied in this title, there shall be collected both a state and county license for each place of business, except as specifically otherwise provided," is now the same as it appeared in the original code section. The same provision appears in Act No. 194, General Acts 1935, page 256, at page 558.

In construing Act No. 194, supra, this office ruled in Quarterly Report of the Attorney General, Vol. 14, page 85, that an automobile dealer, doing business in more than one county, must procure a state and county license in each county in which he does business. It is my opinion that the conclusions reached in this opinion are equally applicable to the instant inquiry.

Therefore, I will answer your first and second questions by stating that one state license is not sufficient for a fortune teller to do business throughout the state and in each county in the state. Such fortune teller must purchase a state and county license in each county in which he does business.

Cf. Biennial Report of the Attorney General 1930-32, page 1002.

The answer to questions one and two preclude the necessity for answering your third question.

Yours very truly,

SI GARRETT,

Attorney General

February 14, 1952

Hon. J. C. Pattillo

Clerk, Circuit Court

Chilton County

Clanton, Alabama

Chilton County — Inferior Courts — Costs and Fees — Executions — Clerks — Registers — Sheriffs.

The statutes (Title 7, Section 518, and Title 11, Section 7, Code of Alabama 1940), allowing execution to issue against successful plaintiff for costs incurred at his instance, after a return of execution against the defendant "no property found", are applicable to the Chilton County Law and Equity Court, created by Act No. 222, General and Local Acts 1949, page 314.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of December 19, 1951, is as follows:

"Please give me your official opinion of Section 518, Title 7, Code of Alabama 1940, as to whether or not it is applicable to our Chilton County Law and Equity Court which was established by Act of the Legislature of regular session, 1949, page 314. In other words, if I issue an execution against the plaintiff for his cost when an execution against the plaintiff for his cost when an execution against the defendant has been returned 'No Property Found.' in our Chilton County Law and Equity Court, does said section apply?

"If you rule that said section is not applicable to our Chilton County Law and Equity Court, can the clerk be compelled to issue suits, make all of the necessary records, issue all summons and perform all of the duties of the clerk required of him in said court and can the sheriff be compelled to perform the duties required by him? If there is no remedy whereby the cost created by a plaintiff cannot be collected from the plaintiff where there is no property owned by the defendant upon which to levy."

In my opinion, Title 7, Section 518, Code of Alabama 1940, is applicable to cases tried in the Chilton County Law and Equity Court. The act referred to in your inquiry, Act No. 222, General and Local Acts 1949, page 314, established the Chilton County Law and Equity Court. In Section 1 of said act, this court is described as a court of record, having jurisdiction over misdemeanors and concurrent jurisdiction with the circuit court over certain described cases. The Clerk and Register of the Circuit Court of Chilton County are made respectively the ex-officio Clerk and ex-officio Register of the Chilton County Law and Equity Court. By the terms of this act, the sheriff is required to perform certain functions for the court.

It is provided in Section 4 of Act No. 22, supra, that the Clerk of the Chilton County Law and Equity Court "shall be entitled to the same fees, commissions and emoluments as are now, or as may hereafter be, allowed

to Circuit Clerks of Alabama, except as hereinafter provided, and the same shall be collected as such fees and commissions are collected in the Circuit Courts; except that in civil matters where suit is brought for \$100.00 or less only the fees and commissions allowed by law to Justices of the Peace shall be collected;"

As to the Register of the Chilton County Law and Equity Court, Section 4, supra, provides that the register "shall be entitled to the same fees and commissions as are now, or as may hereafter be, allowed to the Register of Circuit Courts in Equity, and the same shall be collected as such fees are collected in Circuit Courts."

The sheriff, by the terms of Section 15 of Act No. 222, supra, receives "such compensation as he receives under the law of the State of Alabama or any law enacted in the future by the Legislature of Alabama for the compensation of the sheriff for similar services in the Circuit Court,"

It is evident from the above-quoted provisions of Act No. 222, supra, that the Legislature intended that officers' costs and fees be collected in the same manner and in the same way as costs are collected in the circuit court. You are advised, therefore, that Section 518, supra, and Title 11, Section 7, Code of Alabama 1940, allowing costs created at the instance of the plaintiff to be taxed against the plaintiff after an execution has been issued against the defendant and returned "no property found," are applicable in the Chilton County Law and Equity Court. See Quarterly Report of Attorney General, Vol. 39, page 60, and Quarterly Report of Attorney General, Vol. 33, page 49.

Yours very truly,

SI GARRETT

Attorney General

February 14, 1952

Honorable John A. Williams

Clerk and Register

Circuit Court

Chambers County

LaFayette, Alabama

Clerks of Circuit Courts — Costs and Fees — Subpoenas.

1. A clerk of a circuit court is entitled to charge a fee of twenty cents for entering in the appearance docket a sheriff's return or a copy thereof in a civil case.
2. A circuit clerk is not entitled to receive a fee of twenty cents for entering in the subpoena docket a sheriff's return or a copy thereof to a subpoena issued to a witness in a civil case.
3. A circuit clerk is not entitled to receive a fee of fifteen cents per hundred words in making a copy of subpoena.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of September 26, 1951 is as follows:

"Please give me your opinion as to whether the circuit clerk in civil cases is entitled to a charge of 20c for entering all sheriff's returns or copy thereof as a part of his costs, including entering such returns on all subpoenas served by such sheriff. Also, please give your opinion if such clerk in such cases is entitled to 15c per 100 words in making a copy of such subpoenas."

Your inquiry really asks three questions, which are as follows:

1. Is a circuit clerk in a civil case entitled to charge twenty cents for entering a sheriff's return or a copy thereof?
2. Is a circuit clerk in a civil case entitled to charge a fee for entering returns to all subpoenas served by the sheriff?
3. Is a circuit clerk entitled to receive a fee of fifteen cents for each one hundred words in making a copy of subpoenas?

In my opinion, question No. 1 should be answer in the affirmative. Title 11, Section 21, Code of Alabama 1940, which establishes the fees of circuit clerks, provides in part as follows:

"Issuing summons and complaint	\$1.25
Making every copy thereof	.30
Making every copy thereof, when over two hundred words, for each one hundred words	.15
Entering sheriff's return or copy thereof	.20"

It is my opinion that the last fee refers to the duty of the clerk in entering in his appearance docket the sheriff's return to the summons and complaint. Title 13, Section 198, provides in part as follows:

"It is the duty of the clerk of the circuit court: 2. To keep an appearance docket of civil cases, in which must be entered all the civil actions, the names of the parties, the character of action, the names of the attorneys by whom the same are bought (sic), and the sheriff's return."

When the clerk enters in the appearance docket the sheriff's return to the summons and complaint, he is entitled to charge a fee of twenty cents as part of his costs.

In answer to inquiry No. 2, it is my opinion that the clerk is not entitled to charge a separate fee, in the amount of twenty cents, for entering a return to all subpoenas served by the sheriff.

It is true that Title 13, Section 198, Subsection 6, Code of Alabama 1940, as amended by Act No. 617, General Acts 1947, page 465, requires the clerk to keep a separate subpoena docket. In this docket the clerk is required

to enter the return of the sheriff to the subpoena. I note, however, that in the schedule of fees for circuit clerks, which appears in Section 21, *supra*, there is no fee prescribed to compensate the clerk for entering a return to a subpoena. The fee for "Entering sheriff's return or copy thereof" closely follows in the fee schedule the fee for "Issuing summons and complaint." The fee for "Entering a sheriff's return or copy thereof," in my opinion, has reference to the entry of a return to a summons and complaint and does not have reference to the entry of a return to a subpoena issued for a witness. After this schedule lists a fee for "Issuing subpoena for each witness," the schedule does not further list any fee for entering a return to a subpoena. It is my opinion, therefore, that although the clerk is required to enter a return to each subpoena in his subpoena docket, there is no fee prescribed for such entry.

In answer to the third question, this office has already decided that the clerk is not entitled to a fee for making a copy of subpoena. The fee for issuing a subpoena includes the making of one copy. Quarterly Report of Attorney General, Volume 58, page 74

Yours very truly,

SI GARRETT,
Attorney General

February 14, 1952

Hon. Edgar Underwood

Judge of Probate

Franklin County

Russellville, Alabama

Counties — Notices — Publication.

1. Prior to July 26, 1951, the effective date of Act No. 286, General and Local Acts 1951, page 571, the county governing body was authorized under the provisions of Title 12, Section 12, Subsection 13, Code of Alabama 1940, as amended by Act No. 344, General Acts 1945, page 570, to pay the expenses of the publication of notices required by Section 106 of the Constitution of Alabama 1901, whether the local bill passed or was defeated.

2. Prior to July 26, 1951, the effective date of Act No. 286, *supra*, the county was required, under the provisions of Title 12, Section 174, Code of Alabama 1940, to pay the expenses of the publication of notices required by Section 106 of the Constitution of Alabama 1901, provided the bill passed and became a law.

3. On and after July 26, 1951, the effective date of Act No. 286, *supra*, the county must pay all advertising expenses of notices published under Section 106 of the Constitution of Alabama 1901, provided such notices are signed by a member of the Legislature from the county, and it is immaterial whether the bill passes or is defeated.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of December 4, 1951, is as follows:

"The local printer has presented the county with a statement for advertising local bills, several of which were introduced prior to but were not enacted until after the effective date of Oct No. 286 - S. 98 - McCary of the 1951 Legislature which requires said local bills to be signed by the representative sponsoring the same. None of these local acts were signed. For example, one local bill was published for the first time on July 19, 1951, was not signed, but was enacted and approved September 5, 1951. Another local bill, was advertised July 5, 1951 and failed to pass the legislature. The advertisement of this bill was not signed.

"May the county pay the expense of printing the advertisement of the local bill published for the first time on July 19, 1951? May the county pay for the advertisement of the local bill that did not pass the legislature advertised for the first time July 5, 1951? Your attention is called to said Act 286 and Section 12 of Title 12 (13) of the Code."

In my opinion, the county may pay the expense of printing an advertisement of a local bill published on July 19, 1951, and a local bill published on July 5, 1951, whether or not the notices were signed by a member of the Legislature from the county.

Prior to the enactment of Act No. 286, General and Local Acts 1951, page 571, approved July 26, 1951, the county governing body was authorized under the provisions of Title 12, Section 12, Subsection 13, Code of Alabama 1940, as amended by Act No. 344, General Acts 1945, page 570, to pay for the advertising expenses of notice of the intention to apply for the passage of a local act, as required by Section 106 of the Constitution of Alabama 1901. The county was authorized to pay this advertising expense whether the local bill passed and became a law or whether it was defeated, so long as the local act related exclusively to the particular county involved. On the other hand, if the act did not pass, the county was not absolutely required to pay for the advertising expenses, under the provisions of Section 12, Subsection 13, as amended, supra, but was authorized to do so. Quarterly Report of Attorney General, Vol. 17, page 195.

Prior to the effective date, July 26, 1951, of Act No. 286, supra, the county had no alternative but to pay the advertising expenses for such notices when the bill was thereafter enacted into law. Title 12, Section 174, Code of Alabama 1940. Since Act No. 286, supra, was not effective until July 26, 1951, advertising expenses incurred before that date should be paid for by the county in accordance with the rules above stated; that is to say, for all advertising of notices published July 26, 1951, under provisions of Section 174, supra, the county must pay for such notices whether signed or not if the bill thereafter became a law; and, under the provisions of Section 12, Subsection 13, as amended, supra, the county is authorized, but not required, to pay such advertising expense even if the bill did not become a law.

On July 26, 1951, however, Act No. 286, supra, became effective. This act requires that before the county must pay the advertising expenses for the publishing of notices required by Section 106 of the Constitution of Alabama 1901, the notice must be signed by a member of the Legislature from the county involved. It has been held that if a notice published under the pro-

visions of Section 106, supra, is not signed, that is no obstacle to its constitutionality. *Dudley v. Fitzpatrick*, 143 Ala. 162, 39 So. 384. However, even though a published notice need not be signed, so far as the constitutionality of a local law is concerned, the notice must now be signed in order to obligate the county to pay the advertising expenses. Therefore, if a notice of intention to apply for the passage of a local act was published on or after July 26, 1951, the county is not obligated to pay the expenses of advertising such notices, unless that notice is signed by a member of the Legislature from the county. In my opinion, the date of the publication of the notice in the newspaper would determine whether or not the county should be governed by Section 12, Subsection 13, as amended, supra, and Section 174, supra, or by Act No. 286, supra. As of July 26, 1951, the effective date of Act No. 286, supra, the newspapers, and everyone for that matter, are presumed to have known that if a publication of such notice was made on or after July 26, 1951, it would not be a charge upon county funds unless signed by a member of the Legislature from that county.

Your inquiry relates to a notice published the first time on July 19, 1951, the bill later becoming law, and a notice published on July 5, 1951, wherein the bill failed to become a law. As to the former notice published before July 26, 1951, where the bill became a law, the county governing body must pay the expense of publication, whether the notice was signed or unsigned, because on that date Section 174, supra, would govern. As to the later notice published before July 26, 1951, where the bill later failed to pass, the county may in its discretion pay for such advertising expenses incurred on that date, under the provisions of Section 12, Subsection 13, as amended, supra; and it is immaterial whether the notice on that date was signed or unsigned. Any notices, however, appearing on or after July 26, 1951, are not debts of the county unless signed by a member of the Legislature from that county. It is immaterial, so far as advertising expenses incurred on or after July 26, 1951, whether the bill became a law or not. The county is requested and must pay such expenses if the notice was signed.

Yours very truly,

SI GARRETT,

Attorney General

February 14, 1952

Honorable L. B. Stephens

Executive Director

Board of Pardons and Paroles

State of Alabama

Montgomery, Alabama

Pardon — Parole and Probation — Notices.

1. So long as meetings of the Board of Pardons and Paroles are open to the general public, no notice need be given under Title 42, Section 4, Code of Alabama 1940, as amended by Act No. 599, General and Local Acts 1951, page 1030.

2. An order entered in the minutes of the Board of Pardons and Paroles, signed by all members of the Board, which order sets the time and place of Board meetings, constitutes due notice to the Board.

3. Except where statute requires unanimous vote, two members of the Board of Pardons and Paroles constitute a quorum for the transaction of official business.

4. Forms checked and signed by each member of the Board of Pardons and Parole, giving reasons for favoring action of the Board in granting a pardon, parole remission of a fine or forfeiture, or restoration of civil and political rights, deemed sufficient under Title 42, Section 16, Code of Alabama, 1940, as amended by Act No. 599, supra.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion, bearing date of October 16, 1951, is as follows:

"Section 4 of Title 42 of the Code of Alabama, 1940 as amended by the regular session of the legislature, 1951, reads in part as follows:

"'. . . No pardon, parole, remission of fine or forfeiture or restoration of civil and political rights shall be granted or ordered except in an open public meeting of the board after due notice of the meeting shall have been given to each member of the board in such manner as the board may direct.'

"1. Is it necessary to give public notice or any notice to any one of said meeting except the members of the Board?

"2. Will an order duly entered in the minutes of the Board setting a definite day, hour and place of holding the open public meeting each week and signed by all members of the Board constitute due notice to all members of the Board of said meeting?

"3. Would two members of the Board present at such open public meeting constitute a quorum for granting or ordering pardons, paroles, remission of fines or forfeitures or restoration of civil and political rights as provided in Section 1 except where unanimous vote is required under Title 42, Code of Alabama, 1940, as amended?

"Section 16 of Title 42, Code of Alabama, 1940, as amended by the general session of the legislature, 1951, is in part as follows:

"... Each member favoring a pardon, parole, remission of a fine or forfeiture, or restoration of civil and political rights shall enter in the file his reasons in detail, which entry and the order shall be public records;"

"1. In your official opinion will the attached forms properly filled in, checked and signed by each member of the Board favoring paroles, pardons, remissions of fines or forfeitures or restoration of civil and political rights and made a part of the official file of the Board comply with the above section?"

1. Section 4 of Title 42, Code of Alabama 1940, as amended by Act No. 599, General and Local Acts 1951, page 1030, provides that pardons, paroles, remissions of fine or forfeiture, or restoration of civil and political rights shall not be granted except in an "open public meeting." No notice to the general public is required by the statute. It is my opinion that so long as the public is not excluded from any meeting, and provision is made for attendance of all who wish to attend, no notice need be given to the general public. However, anyone inquiring must be told the time and place of the meeting.

2. Section 4, as amended, *supra*, provides that, "due notice of the meeting shall have been given to each member of the board in such manner as the board may direct." What constitutes due notice varies according to the circumstances of each particular case. *Town of Burlington v. Dunn*, 61 N. E. 2d 247, 313 Mass. 216. It is my opinion that considering the instant circumstances, and order entered in the minutes of the Board setting the time and place of meeting, which order is signed by all members of the Board, constitutes "due notice."

3. Your third inquiry may be answered by reference to Title 42, Section 1, Code of Alabama 1940, as amended by Act No. 599, *supra*, where it is provided in part that, "Two members of the board shall constitute a quorum for the transaction of the official business of the board." Except in cases where the statute requires a unanimous vote, I am of the opinion that two members constitute a quorum for granting or ordering pardons, paroles, remissions of fines or forfeitures, or restoration of civil and political rights.

4. In answer to your last inquiry, you are advised that I have examined the proposed forms to be checked and signed by each member of the board favoring paroles, pardons, remissions of fines or forfeitures, or restoration of civil and political rights, and I am of the opinion that, properly executed, they meet the requirements of Title 42, Section 16, Code of Alabama 1940, as amended by Act No. 599, *supra*.

Very truly yours,

SI GARRETT

Attorney General

February 15, 1952

Hon. G. Claiborne Blanton

Judge of Probate

Dallas County

Selma, Alabama

Judges of Probate — Records — State Department of Public Welfare.

Probate judges are required by Act No. 321, General and Local Acts 1951, page 612, to keep permanently, in bound volumes for public inspection, the reports containing names of persons receiving public assistance in their respective counties.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of November 21, 1951, is as follows:

"Your opinion is respectfully requested on the meaning of Paragraph B, Section 1 of Act No. 321, House Bill 46 approved August 1, 1951, the first sentence of which reads as follows:

"(b) The reports so filed with the probate judge shall be securely bound by him in a separate record book provided for that purpose, which book and all reports contained therein shall be public records and shall be open to public inspection at all times during the regular office hours of the probate judge."

"The question in my mind to which I would like an answer is: Are the probate judges required to buy and keep forever record binders necessary to keep these lists in. I believe the intent of the Legislature was that the current lists furnished by the State Welfare Department would be kept on hand for public inspection. It seems to me that any person who is interested would want to know whose name is on the list now and not whose name would have been on the list six months or a year ago. In other words, it seems to me that the Legislature expected us to keep only the lists furnished us each three months. If this is correct we would only have to buy one binder. If not, we will have to buy many binders from time to time, which I think would be of no use to anyone."

The intent of the Legislature, in requiring the names and addresses of persons receiving public assistance to be filed with the probate judge and retained by him for purposes of public inspection, can be ascertained only from the wording of Section 1, Paragraph (b), Act No. 321, General and Local Acts 1951, page 612.

Nothing in this act indicates a legislative intent that only temporary records of this information be kept. The act does not specify that only current lists are to be bound and open to inspection. Paragraph (b) refers to all "the reports so filed" and specifically makes them public records. The

act requires that these quarterly reports filed with the probate judge "be securely bound by him in a separate record book provided for that purpose."

Title 13, Section 280, Code of Alabama 1940, provides that it is the duty of the probate judge "to keep all the books, papers, and records belonging to his office with care and security." This section also provides that certain types of records are to be bound in separate books; for example, books for the registration of deeds of conveyance, registration of mortgages, registration of liens of judgments and decrees, etc. In parallel fashion, Act No. 321, supra, requires the probate judge to maintain in bound volume the new type of record, i. e., the names of welfare recipients.

This act discloses no intention to differentiate between the current lists and those of previous months. It is readily conceivable that the names of persons who received public assistance at a particular time in the past might be valuable information, desired for various appropriate reasons.

Therefore, Act No. 321, supra, requires probate judges to maintain the aforementioned records permanently in bound volumes for public inspection, and this permanent record should include the old lists as well as the current ones.

Yours very truly,

SI GARRETT

Attorney General

February 15, 1952

Hon. W. R. Stuart

Judge of Probate

Baldwin County

Bay Minette, Alabama

Hotels — Licenses.

A boarding house, where all the persons stay for a week or longer period of time, is not liable for the hotel license levied by Title 51, Section 540, Code of Alabama 1940.

A boarding house, where meals are served to regular boarders for a week or longer period of time and not to the general public, is not liable for the license levied on public eating places by Title 51, Section 582, Code of Alabama 1940.

Opinion by Assistant Attorney General Galloway.

Dear Sir:

Your request for an official opinion, bearing date of September 24, 1951, is as follows:

"Your official opinion is respectfully requested on the following situation:

"A lady here has a boarding house, with about twelve (12) rooms which she rents **ONLY** for at least a week, or more, to various people. (She will not rent to anyone by the day, or for less than seven days.)

"She has in this boarding house a dining room in which she serves only those who occupy rooms at her house by the week or more, and to non-roomers. She will not furnish board to anyone by the meal, day or for less than a week at a time, roomers or non-roomers.

"The questions at issue are:

(1) Does she have to buy a Hotel license under Section No. 540, Title No. 51 of the 1940 Code, or any other regulation or license law?

(2) Does she have to buy a Cafe license under Section No. 582, or Section No. 584, of the 1940 Code, or any other regulation or license law?

"The 1951-52 licenses being due in October prompts me to ask you for as speedy a ruling on these questions as possible."

Your first inquiry should be answered in the negative.

Title 51, Section 540, Code of Alabama 1940, provides in part as follows:

"Innkeepers and hotels.—Each person keeping a public inn or lodging house of five or more bed rooms where transient guests are lodged for pay shall be deemed for the purposes of this title to be engaged in the business of keeping a hotel. A transient guest is one who puts up for less than one week at such hotel, but such a house is no less a hotel because some of the guests put up for longer periods than one week . . ."

A lodging house becomes a hotel within the meaning of this section when it contains as many as five room in which transient guests are lodged for pay. Quarterly Report of Attorney General, Vol. 5, page 104.

Section 540 defines a "transient guest" as "one who puts up for less than one week at such hotel."

Since the boarding house in question caters only to persons who remain at least a week or for a longer period of time, it is therefore my opinion that such boarding house does not lodge "transient guests," and is not subject to the license provided for in Section 540, supra. Quarterly Report of Attorney General, Vol. 21, page 175.

Your second inquiry should also be answered in the negative.

Title 51, Section 582, Code of Alabama 1940, provides for a privilege license for "Each restaurant, cafe, cafeteria, lunch counter or public eating house where meals, food or refreshments are furnished or served and charged for."

A "public eating house," as the expression is used in Section 582, is open to general use, wherein people are fed and charged therefor, whereas a pri-

vate boarding house is one serving meals only to the regular boarders. See Biennial Report of the Attorney General 1926-1928, page 651.

Since the boarding house in question, as stated in your inquiry, serves meals only to its regular boarders and not to the general public, it is my opinion that such a boarding house is not subject to the license provided for in Section 582, supra. It is obvious that the license prescribed by Title 51, Section 584, Code of Alabama 1940, is not applicable.

Yours very truly,

SI GARRETT

Attorney General

February 15, 1952

Hon. L. B. Sullivan, Director

Department of Public Safety

State of Alabama

C A P I T O L

Public Safety Department — Motor Vehicles — Tractors — Licenses — Highways and Highway Department.

When farm tractors are operated on the highways primarily as a means of transportation, the driver thereof must be not less than sixteen years of age and must have procured a motor vehicle driver's license. Title 36, Sections 59 and 67, Code of Alabama 1940.

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion, bearing date of October 25, 1951, is as follows:

"We would like to have an opinion as to whether it is legal under the existing laws with reference to the operation of tractors if they are used for the purpose other than that of going to and fro from one field to another or in the use temporarily driven or propelled on the highways as a farm implement. In other words, if a tractor is being driven on the road as a means of transportation would it not come under the statutes that provide that the operator of that tractor would have to have a driver's license and would have to be 16 years of age or above before this vehicle could be operated."

I am of the opinion that your question should be answered in the affirmative.

Under the motor vehicle laws of this state a "farm tractor" is defined as: "Every motor vehicle designed and used primarily as a farm implement for

drawing plows, mowing machines and other implements of husbandry." Title 36, Section 1 (f), Code of Alabama 1940, as amended by Act No. 517, General and Local Acts 1949, page 754.

Such laws provide that: "Every person, except those hereinbelow exempted, before driving any motor vehicle upon a public highway in this state, shall procure a driver's license." Title 36, Section 59, Code of Alabama 1940. They expressly provide that a driver's license shall not be issued to any person less than sixteen years of age. Title 36, Section 66, Code of Alabama 1940, as amended by Act No. 628, General Acts 1947, page 483. Any person under the age of sixteen years who drives or operates any motor vehicle upon the public highways of this state, even though accompanied by an adult, is guilty of a misdemeanor. Title 36, Section 55, Code of Alabama 1940, as amended by Act No. 517, supra; Quarterly Report of Attorney General, Vol. 36, page 26. The fact that the law prohibits one from procuring a license if he is under sixteen years of age does not authorize him to drive without a license. In other words, the prohibition the individual is under cannot become an exemption. Biennial Report of Attorney General, 1934-1936, page 617.

The motor vehicle laws contain certain exemptions with reference to farm tractors generally. For instance, farm tractors are exempted from the width restrictions which limit other motor vehicles, which may not exceed eight feet in width, whereas farm tractors are allowed a width of nine feet. Title 36, Section 93, Code of Alabama 1940. Moreover, the general regulations as to size and weight of motor vehicles moving on the highways of this state do not apply to "implements of husbandry **temporarily** propelled or moved upon the highways." (Emphasis supplied.) Title 36, Section 90, Code of Alabama 1940, as amended by Act No. 255, General and Local Acts 1949, page 377. The drivers of farm tractors are exempted from the licensing requirements of Section 59, supra, under the conditions stated in the following statutory exemption: "Any person while driving any road machine, **farm tractor**, or implement of husbandry **temporarily** driven or moved on a highway." (Emphasis supplied.) Title 46, Section 67, Code of Alabama 1940.

I think it clear, from the statutory language, that it was the legislative intent that the exemptions aforesaid apply only while a farm tractor is **temporarily** being driven on the highway. It has been noted that Sections 90 and 67, supra, speak of "temporarily propelled or moved upon the highways" and "temporarily driven or moved on a highway." The obvious intent was to enable farm tractors and their drivers to engage in necessary travel, without a license, from one farm to another farm, or from one part of a farm to another part thereof, or to turn on and cross over a highway, or to drive temporarily on a highway for the purpose of securing gasoline, lubrication, and repairs. The statutory language negatives the idea that such exemptions are applicable while a farm tractor is being driven on the highway primarily as a means of transportation, and in lieu of a passenger motor vehicle, truck, or other usually accepted means of motor transportation, as a means of convenience and not from necessity.

Therefore, it is my opinion that, when a farm tractor is used as a means of transportation, in answer to the personal convenience of the driver, the driver thereof must not be less than sixteen years of age and he must have procured the motor vehicle driver's license required by Section 59, supra.

Yours very truly,

SI GARRETT

Attorney General

February 15, 1952

Hon. J. M. McCullough, Jr., Director

State Department of Corrections and Institutions

C A P I T O L

Corrections and Institutions, Department of — Prison and Prisoners.

The Department of Corrections and Institutions has authority, by rule or regulation, to substitute the use of tokens in State prisons in lieu of money; and to prohibit prisoners from processing money; but the department has no authority to confiscate, and declare forfeited to the State, money found in the possession of prisoners, in violation of prison rules and regulations. Prisoners may be deprived of the use and custody of money, but any money taken from their possession must be held in trust and returned to them when discharged.

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion, bearing date of October 26, 1951, is as follows:

"Under the Alabama Code we are charged with the responsibility of removing money from the inmates when they enter the penitentiary. This section of the Code has never been complied with.

"It is our plan sometime within the next thirty days to remove all money from the inmates and declare same as contraband. We will use tokens in lieu of money inside the institutions. Since we have the authority to declare certain items in the institutions as contraband and confiscate them, I would like to have an opinion from you as to whether or not we would have the authority to confiscate any monies caught on inmates after it has been declared contraband and the inmates have had ample notice to surrender all monies in their possession.

"I would appreciate your advising me regarding this matter at the very earliest moment, as we plan to post notices to inmates in the institutions within the next few days, telling them of our plan to declare money contraband."

I am of the opinion that your inquiry should be answered in the negative.

Article 5, Constitution of the United States, provides in part as follows:

"No person . . . shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Section 6, Constitution of Alabama 1901, provides in part as follows:

" . . . the accused . . . shall not . . . be deprived of life, liberty, or property, except by due process of law;"

Section 19, Constitution of Alabama 1901, provides as follows:

"That no person shall be attainted of treason by the legislature; and no conviction shall work corruption of blood or forfeiture of estate."

The Department of Corrections and Institutions is charged with the function and duty of managing, supervising, and controlling all penal and correctional institutions, and may promulgate such rules and regulations necessary to the management and security of all prisons and jails. Title 45, Section 3, Code of Alabama 1940. Its director has all power and authority necessary or convenient to carry out the functions and duties of the department, but in the exercise of such power and authority he is subject to all legal restrictions, limitations, conditions, and penalties, civil and criminal, with respect to the exercise of such powers and authorities. Title 45, Section 7, Code of Alabama 1940. He has the power and authority to establish and promulgate rules and regulations respecting the manner of performance of all functions and duties of the department. Title 45, Section 8, Code of Alabama 1940.

Title 45, Section 31, Code of Alabama 1940, provides that:

"The officer in charge of any prison or camp must take in charge any property or money or other thing of value in the possession of any convict at the time of the delivery of such convict to him, and shall pay or deliver the same to such person as the convict may in writing direct, or to the convict on his discharge, or to his personal representative in case of his death previous thereto; and should no personal representative be appointed within six months after his death, then into the state treasury."

13 C. J., Convicts, Section 6, page 914, states as follows:

"In accordance with the modern policy of a more humane administration of the criminal law, the early doctrines of the common law in regard to the attainder, forfeiture, and corruption of blood of convicts have been either entirely swept away or modified by constitutional and statutory provisions. Thus the constitution of the United States provides that congress shall have the power to declare the punishment of treason, but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted."

The whole subject of the management and control of State prisoners convicted of crime is one for the Legislature, within the constitutional limitation against cruel and unusual punishment. *Allgood, Auditor v. State, ex rel. Wilson*, 20 Ala. App. 665, 104 So. 847.

In *Westbrook v. State*, 133 Ga. 578, 66 S. E. 788, it was pointed out that:

"The convict occupies a different attitude from the slave toward society. He is not mere property, without any civil rights, but has all the rights of any ordinary citizen which are not expressly or by necessary implication taken from him by law. While the law does take his liberty, and imposes a duty of servitude and observance of discipline for the regulation of convicts, it does not deny his right to personal security against unlawful invasion."

The power to condemn or to declare a forfeiture must be found in the statutes, and such statutes must be pursued with reasonable strictness. **United States v. Charles D. Kaier Co.**, 61 Fed. 2d 160.

In **People v. Broad (General Motors Acceptance Corporation, Intervener)**, 216 Cal. 1, 12 Pac. 2d 941, it is stated that notice and a judicial hearing are necessary to constitute a valid forfeiture, even when the forfeiture is decreed by statute, as distinguished from a common law or judicial forfeiture, and that "the law requires proceedings to be instituted for the purpose of ascertaining the facts of the forfeiture, . . . and the inchoate title of the state to the goods forfeited is not fully consummated until after judicial condemnation has been had."

While Sections 3, 7, 8, and 31, *supra*, define and enumerate certain powers of the Department of Corrections and Institutions, and of its Director, respecting the care, custody, control, and management of prisons and prisoners, these statutes contain neither express nor implied authority to confiscate, and declare forfeited to the State of Alabama, money found in the possession of prisoners in violation of prison rules and regulations. It is my opinion that the Department clearly has the authority to adopt an appropriate rule or regulation substituting the use of tokens by prisoners in lieu of money, and thereby prohibit prisoners from being in possession of money. However, it is my further opinion that any rule or regulation providing for the confiscation and forfeiture of money found in possession of prisoners, in violation of prison rules and regulations, would be unauthorized and would contravene the constitutional guarantees of "due process of law," and that "no conviction shall work corruption of blood or forfeiture of estate." Article 5, Constitution of the United States; Section 6 and 19, Constitution of Alabama 1901, *supra*.

It is my opinion therefore, that when money is found in the possession of a prisoner, in violation of prison rules and regulations, and such money is otherwise lawfully in the prisoner's possession and is not the fruits of a crime such as burglary, larceny, or robbery, such money cannot be confiscated and forfeited to the State. The prisoner may be deprived of its use and possession, but the money must be held by prison authorities in trust for the prisoner and must be returned to him at the time of his discharge from prison.

Yours very truly,

SI GARRETT

Attorney General

February 15, 1952

Hon. George A. Mosley
Sheriff of Montgomery County
Montgomery, Alabama

Sheriffs — Bonds — Constables — Executions.

Where the indemnity furnished the sheriff under Title 7, Sections 533 and 875, Code of Alabama 1940, is not general, the amount of the bond of indemnity may be fixed in any penal sum agreed upon by the sheriff and the plaintiff in execution; but in the absence of an agreement, the sheriff cannot demand a penal amount in excess of a sum reasonably necessary to secure himself, and is justified in refusing to accept a bond with a penalty which is less than the value of the property rightfully seized in execution.

Opinion by Assistant Attorney General Barton.

Dear Sir:

A request for an official opinion, submitted by your Deputy, H. Fancher Phelps, bearing date of August 1, 1951, is as follows:

"Re: Indemnifying Bond.

"I am requesting an official opinion in regard to an 'Indemnifying Bond' for protection of Sheriff, in levying and selling property.

"(1) All Forthcoming Bonds are twice the amount of the judgment.

"(2) Replevin Bonds are twice the value of the property levied upon.

"There isn't anything in the Ala. Code as to amount an Indemnifying Bond should be. I will appreciate if you can give me any information as to determine the amount the Bond be."

This inquiry cannot be answered categorically, for the reason that it is not absolutely necessary for any penal amount to be specified in the bond of indemnity. Such bond may be an indemnity in general terms with no fixed penal sum; it may contain any penal sum to which the sheriff and plaintiff in execution agree, or in the absence of such agreement the amount thereof is subject to the reasonable limitations hereinafter discussed.

Title 7, Sections 533 and 875, Code of Alabama 1940, provide as follows:

"Section 533. Bond of indemnity, when required.—When a reasonable doubt exists whether the personal property levied on belongs to the defendant, or whether personal property alleged to be his is subject to levy and sale, the sheriff may require of the plaintiff, his agent, or attorney, a bond of indemnity; and if it is not given within ten days thereafter, he may restore the property to the defendant, if levied on, or decline to levy, if one has not been made; but he may be required to levy and sell at any time thereafter, on being indemnified."

Section 875. Bond indemnity.—When a doubt exists as to the tile of the defendant to personal property which the sheriff is required to levy upon, he may demand indemnity from the plaintiff."

See, also, Title 13, Section 464, Code of Alabama 1940.

The original record in the case of *Leader, et al. v. Mattingly*, 140 Ala. 444, 37 So. 270, shows that the indemnity bond therein contained, which was held good on appeal, was as follows:

"...Now, therefore, we, the undersigned, do hereby covenant and agree that we will well and truly keep, and bear harmless, and indemnify the said _____, sheriff, and all and every person and persons aiding and assisting him in the premises of and, from all harm, let, troubles, damages, costs, suits, actions, judgments and executions which shall or may at any time arise, come or be brought and attorneys' fees incurred and incident thereto, as well for the levying of said execution as the taking possession and disposing by sale or otherwise of said property, and of and concerning any other or further step he may take in executing said execution or other process, in furtherance thereof...."

It will be noted that no fixed penalty was specified in the bond of indemnity given to the sheriff in the case of *Leader, et al. v. Mattingly*, supra. The bond in that case was a general bond of indemnity. See, also, form of a general indemnity bond to sheriff, as recommended by Jones' Alabama Practice and Forms, Vol. 2, Section 7651, page 408 (1947 Ed.). On the other hand, the bond may be fixed in any penal sum to which the sheriff and the plaintiff in execution may agree. It is entirely a matter of contract between the parties. If, however, there is no mutual agreement as to the amount of the bond, Sections 533 and 875, supra, do not clothe the sheriff with the power and authority to demand a bond the amount of which is unreasonable. The amount must bear some reasonable relationship to the value of the property to be seized and to the liabilities which the sheriff may incur as a result of the seizure.

"In determining the indemnity to which an officer is entitled, where there is any reasonable doubt as to the ownership, of the goods or their liability to be taken on execution, that indemnity may include damages, costs, and other legal expenses, including counsel fees." *Russell v. Walker*, 150 Mass. 531, 23 N. E. 383.

"A sheriff or constable cannot demand an indemnity bond with a penalty in the excess of the sum necessary to secure himself." *Wadsworth v. Walliker*, 51 Ia. 605, 2 N. W. 420.

"A sheriff or constable is not entitled to a bond for the value of the whole thereof where he levies upon property greatly in excess of the amount necessary to satisfy the writ." *Bachelder v. Chaves*, 5 N. M. 562, 25 P. 783.

"When a statutory claim is made by a third person to property levied upon under an execution, the officer making the levy is justified in refusing to accept from the execution creditor, under the statute, a bond of indemnity with a fixed penalty which is less than the value of the property." *State v. Springgate*, 58 Mo. App. 402.

"A sheriff or constable is not bound to proceed with the writ unless the plaintiff in execution furnishes him with ample indemnity." *Kaster v. Pease*, 42 Ia. 488; *Grey v. Parker*, 49 Ia. 624.

Therefore, it is my opinion that a sheriff's bond of indemnity may be a bond of general indemnity or a bond with a fixed penal amount within the following limitations: The sheriff cannot demand an indemnity bond with a penalty in excess of the sum reasonably necessary to secure himself, but he is justified in refusing to accept a bond of indemnity which is less than the value of the property rightfully seized or to be seized. See 57 C. J., Sheriffs and Constables, Section 564, page 921.

Yours very truly,

SI GARRETT

Attorney General

February 15, 1952

Honorable Tom C. Garner

Judge of Probate

Jefferson County

113 Courthouse

Birmingham 3, Alabama

Elections — Registers — Jefferson County — Absentee Ballots.

1. The Probate Judge of Jefferson County is required to furnish absentee ballot supplies to the Register of the Circuit Court of the Tenth Judicial Circuit, Bessemer Division, for primary elections.

2. The appointing board, consisting of the judge of probate, the sheriff, and the circuit clerk, should appoint election officials as required by Act No. 424, General and Local Acts 1949, page 601, to handle absentee ballots in the Bessemer Division of Jefferson County.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for official opinion, bearing date of January 23, 1952, is as follows:

"Your official opinion is hereby respectfully requested for my guidance in ordering election supplies for the Primary Election in May, 1952, and in the appointment of Election Managers for Absentee Ballot Box.

"Jefferson County has two County Seats, one at Birmingham and the other at Bessemer. Is it my duty to furnish absentee Ballot Supplies to the Deputy Register in the Bessemer Cut-Off?

"If Absentee Ballots are to be delivered by the Deputy Register in Bessemer, should the Election Commission appoint Inspectors, Clerks and a Returning Officer for the Absentee Ballot Box in the Bessemer Cut-Off?

"Your opinion at an early date will be greatly appreciated."

In my opinion, the Probate Judge of Jefferson County should furnish absentee ballot supplies to the person performing the duties of Register of the Circuit Court of the Tenth Judicial Circuit, Bessemer Division.

It is further my opinion that the appointing board, which consists of the judge of probate, the sheriff, and clerk of the circuit court, should appoint election officials to handle the absentee ballots as required by the statutes cited below.

The probate judge of each county is required to furnish election supplies to the officials in charge of the election. Title 17, Sections 186 and 366, Code of Alabama 1940; Quarterly Report of Attorney General, Vol. 48, page 110. These supplies, so far as absentee ballots are concerned, are required to be delivered to the register in chancery of each county. Section 2 of Act No. 424, General and Local Acts 1949, page 601.

Title 13, Section 199, Code of Alabama 1940, as amended by Act No. 567, General and Local Acts 1949, page 894, which provides for the election of a deputy clerk of the circuit court for the Bessemer Division of the Tenth Judicial Circuit, provides, in part, as follows:

"In addition to the duties and authorities hereinbefore in this section set out such deputy clerk shall perform for said division of said court the duties of register in the chancery or equity division of said court at said place."

The question, therefore, is whether or not the deputy clerk of the Circuit Court of the Tenth Judicial Circuit, Bessemer Division, who performs the duties of registers in said court, is a "register" within the meaning of Act No. 424, supra. In my opinion, he is a "register" within the meaning of said act.

By virtue of Act No. 567, supra, the deputy clerk for the Bessemer Division of the Circuit Court of the Tenth Judicial Circuit is the register of the circuit court in that area, and must perform all the duties of the register in that area. One of those duties is to handle absentee ballots in accordance with Act No. 242, supra, as amended by Act No. 4, General Acts 1950, Fourth Special Session, page 43.

I have heretofore held in a similar situation occurring in St. Clair County that both the register of the Southern Judicial Division and the register of the Northern Judicial Division of said county should handle the absentee ballots. See Quarterly Report of Attorney General, Vol. 59, page 15. It is, therefore my opinion that the Probate Judge of Jefferson County should furnish all necessary absentee ballot supplies to the Register of the Bessemer Division of the Tenth Judicial Circuit, and that said register should perform all the duties required of other registers in connection with said ballots.

You have further inquired as to whether or not the Election Commission should appoint inspectors, clerks, and a returning officer for the absentee ballot box in the Bessemer Division.

The only Election Commission which I find existing in Jefferson County is the Election Commission for the City of Birmingham. General Acts 1915, page 322; Title 62, Section 709, Code of Alabama 1940. This is a municipal election commission for the City of Birmingham, and is only active in municipal elections.

Act No. 424, supra, provides for the appointment of election officials to handle absentee ballots. Section 11 of said Act provides as follows:

"Section 11. For every primary, general, special, or municipal election, there shall be appointed three managers, two clerks, and a returning officer, named and notified as are other election officials under the general laws of the State, who shall meet, at the regular time of closing of the election on that day, in the office of the judge of probate for the purpose of receiving, counting, and returning ballots cast by absent voters. The returns from the absent box shall be made as required by law for all other boxes. It shall be unlawful for any election official or other person to publish or make known to anyone the results of the count of absentee votes before the polls close. It is provided, however, that in counties with populations of 50,000 or more, there shall be appointed three managers, two clerks, and one returning officer for each 200 absentee ballots, or fractions thereof, cast at each election. In such counties, the appointing board for the election shall meet in the office four days before the election, determine the number of officials to be appointed, and appoint and notify them as other election officials are appointed and notified. It is provided, further, that this Section shall not apply to municipal elections, in cities and towns of less than 10,000 inhabitants, which are held at a time different from a primary or general election."

You will note, therefore, that in counties with a population of 50,000 or more it is necessary that three managers, two clerks and one returning officer be appointed for each 200 absentee ballots, or fractions thereof, cast at the election. These officials are appointed by the appointing board. Title 17, Section 120, Code of Alabama 1940. You are advised, therefore, that in Jefferson County there should be appointed by this board three managers, two clerks, and one returning officer for each 200 absentee ballots, or fraction thereof, cast at the election, including the absentee ballots cast in the Bessemer Division.

The appointing board is required to meet four days before election to determine the number of election officials to be appointed in connection with absentee ballots. Section 11, *supra*. At that time, the appointing board will know the total number of absentee ballots cast in Jefferson County, including the absentee ballots cast in the Bessemer Division. The total number of such ballots will determine the number of election officials to be appointed; that is to say, for each 200 absentee ballots, or fractions thereof, the appointing board should appoint three managers, two clerks, and one returning officer.

No doubt the absentee ballots from the Bessemer Division will be segregated from those cast in other parts of the county, and it will be known how many absentee ballots have been cast in the Bessemer Division. The appointing board must appoint three managers, two clerks, and one returning officer for each 200 ballots, or fraction thereof, cast in the Bessemer Division; and the register of the Bessemer Division, by the terms of Section 12 of Act No. 424, *supra*, should deliver those absentee ballots cast in the Bessemer Division to the election officials so appointed.

Yours very truly,

SI GARRETT

Attorney General

February 15, 1952

Hon H W. Draughon, Clerk

Circuit Court

Geneva County

Geneva, Alabama

Habeas Corpus — Bail — Costs and Fees — Fine and Forfeiture Fund — Department of Corrections and Institutions — Governor.

1. A habeas corpus petition applying for bail is a civil case, and costs may be taxed against the unsuccessful party as in other civil cases, or apportioned, either in the trial court or in the appellate court.

2. Costs in habeas corpus cases requesting bail cannot be paid from the fine and forfeiture fund of the county, or from the funds of the Department of Corrections and Institutions, such costs not having accrued in a criminal case.

3. Costs in a habeas corpus case requesting bail may be paid either by execution against the unsuccessful petitioner, or out of the Governor's emergency fund.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of November 2, 1951, is as follows:

"Re: State vs. Sam Burditt;

Charge: Rape;

Circuit Criminal No. 2875

"I respectfully request an official opinion in the above styled cause pertaining to court costs. Here is a brief history of the pertinent facts in the case:

5/8/1949—Defendant arrested and committed to jail on warrant returnable to Inferior Court charging the defendant with the offense of Rape.

5/13/1949—Bail refused by the Inferior Court on preliminary hearing.

5/14/1949—Petition for Writ of Habeas Corpus, seeking bail, filed in the Circuit Court.

5/20/1949—Bail refused by Circuit Court on hearing of petition.

5/25/1949-Notice of appeal from ruling of Circuit Court to Court of Appeals filed by defendant.

6/21/1949-Degree of Circuit Court reversed by Court of Appeals and bail allowed.

8/18/1949-Defendant indicted on charge of rape by Grand Jury.

11/2/1949-Defendant convicted of Rape and sentenced to serve 10 years in Penitentiary by Circuit Court.

11/19/1949-Sentence suspended and defendant placed on probation by Circuit Judge.

"I would greatly appreciate your answering the following questions:

"One: When the defendant was convicted, did he then become liable for the court costs in the habeas corpus proceedings, including cost of appeal?

"(A) If your answer to question one is in the affirmative, are such costs a proper charge against the Department of Corrections and Institutions?

"(B) If your answer to question one is in the negative, are such costs a proper charge against the fine and forfeiture fund?

"Two: When defendant was placed on probation and his sentence suspended, could execution then issue against him for the court costs in the habeas corpus proceeding, including cost of appeal?

"(A) If your answer to question two is in the affirmative, and if execution against the defendant should be returned 'no property found' by the sheriff, would such costs be a proper charge against the fine and forfeiture fund?

"(B) If your answer to question two is in the negative, are such costs a proper charge against the fine and forfeiture fund?

"Three: How are the court costs in the habeas corpus proceeding, including cost of appeal, properly taxed and collected in this case?"

I am of the opinion that the costs in the habeas corpus case described in your inquiry may be collected from the Governor's emergency fund. Title 55, Section 105, Code of Alabama 1940. I am further of the opinion that neither the fine and forfeiture fund of the county, nor the funds of the Department of Corrections and Institutions can be charged with costs in the habeas corpus case referred to in your inquiry. Costs accruing in the habeas corpus case cannot be taxed against the petitioner in the habeas corpus case, unless the court enters a judgment to that effect.

It appears that the defendant was arrested and committed to jail on a warrant returnable to the inferior court charging the defendant with the offense of rape, a capital crime. It further appears that bail was refused after a preliminary hearing in the inferior court, and that the defendant filed a petition in the circuit court or a writ of habeas corpus seeking bail. This bail

was refused in the circuit court, and the petitioner in habeas corpus appealed to the Court of Appeals, where the denial of bail in the circuit court was reversed by the Court of Appeals and bail was allowed by the Court of Appeals.

I presume that after the Court of Appeals reversed and remanded the habeas corpus case, the prisoner was released until his trial.

Thereafter, the defendant was indicted on a charge of rape, tried and convicted, and sentenced by the circuit court to ten years in the penitentiary. Later his sentence was suspended and defendant was placed on probation. Your questions concern the taxing and collecting of costs in the trial court, and on appeal in the habeas corpus case.

There are several statutes applicable to the taxing and collecting of costs in habeas corpus cases. Title 15, Section 37, Code of Alabama 1940, provides that witnesses in habeas corpus cases may prove their attendance before the judge trying the case, and that their fees may be taxed in a bill of costs "on the subsequent conviction of the party, where he is detained on a criminal charge." This statute indicates that witnesses fees are taxed in the bill of costs in a subsequent criminal case when the petitioner for habeas corpus has been later convicted on the criminal charge. Of course, without this statute, there could be no such taxing of costs that accrued in one case in a cost bill of another case, but evidently this statute authorizes such procedure. See **Banks v. Mobley**, 4 Ala. App. 510, 58 So. 745. Witness fees that accrue in the habeas corpus case are not taxable in the subsequent criminal case, however, if the defendant is acquitted. **Banks v. Mobley**, supra. It is to be noted that this section of the Code provides for one class of fees, that is, witness fees in habeas corpus cases when the defendant is later convicted on a criminal charge.

Title 15, Section 38, Code of Alabama 1940, provides further that in habeas corpus cases other than those cases mentioned in Title 15, Section 37, supra, the court, or judge, may impose costs, or any portion thereof, on either party. Section 38, supra, further provides that when the writ of habeas corpus is returnable before a judge of the circuit court, costs must be taxed by the clerk of such circuit court, and collected by execution. Section 38, supra, was evidently intended to be applicable in habeas corpus cases where the petitioner for habeas corpus was not subsequently convicted, or where the petitioner for habeas corpus was not charged with a criminal offense. Under those circumstances, costs are allowed to be apportioned. Section 38, supra. Title 15, Section 39, Code of Alabama 1940, enumerates certain fees to which officers are entitled in habeas corpus proceedings. It is stated in that section that such fees must be taxed in the bill of costs "in the case provided for by section 37 of this title and in other cases collected by execution issued by the judge of probate." Title 15, Section 41, Code of Alabama 1940, provides for the time in which an execution for costs in habeas corpus cases may be made returnable.

I have come to the conclusion that the above-cited statutes regulating costs in habeas corpus cases cannot be strictly applied to habeas corpus cases where the petitioner is seeking bail. When bail is denied a prisoner who is charged with a capital offense, and it has been determined that the proof is evident or the presumption great, that prisoner has the right to petition the circuit court for bail. When such an application for bail is made to a circuit judge or to a probate judge, and refused, the petitioner may renew his application in the Supreme Court of Alabama. Title 15, Section 193, Code of Alabama 1940, as re-enacted by Act No. 199, General and Local Acts 1949, page 230. In practice, such applications are submitted in the Court of Appeals of Alabama. When the case reaches the appellate court, it is treated either as an appeal in a habeas corpus case (Title 15, Section 369, Code of Alabama 1940, as amended by Act No. 50, General and Local Acts of 1949, page 75), or as a re-

newal in the appellate court of the application previously filed in the circuit court (Section 193, *supra*). In such cases in the circuit court and in the appellate court, the issue is not whether the court has jurisdiction of the person or the subject matter, but is usually confined to the question of whether or not the prisoner is charged with a capital crime, and whether or not the "proof" is evident or the presumption great." Section 16, Constitution of Alabama 1901. It will be readily seen, therefore, that a prisoner charged with a capital crime, rape, for example, may be entitled to bail because the proof is not evident or the presumption great that he will be found guilty, and that his punishment will be fixed at death; and, nevertheless, that the same prisoner, entitled to bail, may be later convicted in the criminal case and his punishment fixed at something less than death. In other words, a prisoner charged with a capital crime may be successful in his application for bail and still be convicted of the criminal offense with which he is charged. Section 37, *supra*.

The statute allowing witnesses fees accruing in habeas corpus cases to be taxed in a bill of costs upon the subsequent conviction of the party is framed on the theory that if the petitioner for habeas corpus is later convicted, he is the unsuccessful party, and should, therefore, be taxed with the witness costs in the habeas corpus case. This is certainly not applicable in applications for bail, because we have demonstrated that a prisoner may be successful in his application for bail, and he may obtain bail in a proper and legal manner if the proof of his crime is not evident or the presumption of his guilt not great, and at the same time later be convicted by a jury for that same crime. It is my view, therefore, that Section 37, *supra*, is not logically applicable to habeas corpus cases involving an application for bail, but may apply to other habeas corpus cases.

Whether a habeas corpus petition seeking bail is considered as purely a petition for writ of habeas corpus (Title 15, Section 1 et seq., Code of Alabama 1940) or an application for bail (Section 193, *supra*), it is a civil remedy as distinguished from a criminal case. 29 C. J., Habeas Corpus, page 8; 39 C. J. S., Habeas Corpus, page 426; Biennial Report of Attorney General, 1934-36, page 660. In civil actions, the court is allowed to tax costs against the unsuccessful party, or the court may apportion the costs in its discretion. Title 11, Section 65, Code of Alabama 1940. It is my opinion that this rule applies in applications for bail, both in the circuit court and in the appellate court. Execution for costs, taxed by the court, may be issued against the defendant in execution. Title 7, Section 506, et seq., Code of Alabama 1940. It is my opinion, therefore, that when a prisoner applies to the circuit court for bail and bail is refused, the circuit court may tax costs in accordance with Section 65, *supra*. Ordinarily, if a petitioner is denied bail by the circuit court, costs would be taxed against the petitioner as the unsuccessful party. Section 65, *supra*. If the case is appealed (Section 369, *supra*), or application for bail is renewed in the appellate court (Section 193, *supra*), the appellate court would have authority to tax costs and issue execution therefor. In the case outlined in your inquiry, bail was granted and the cause was reversed and remanded, and the appellate court had authority to tax costs against the appellate, which, in the case described in your inquiry, was the State of Alabama. I know of no fund available for the payment of such costs when execution issues against the State of Alabama except the Governor's emergency fund, provided for in Section 105, *supra*. See *State v. Inman*, 239 Ala. 348, 195 So. 448. Application may be made to the Department of Finance under the provisions of that Statute for an allotment. Payment from this emergency fund, however, is dependent upon the approval of the Director of Finance.

In summary, therefore, you are advised that a habeas corpus proceeding in the circuit court and in the appellate courts of the State, wherein a petitioner seeks bail, is a civil proceeding, and costs should be taxed and

collected as in civil cases. If the petitioner is unsuccessful, costs may be taxed against the petitioner and collected from him by execution. If the petitioner is successful, and the State of Alabama is unsuccessful, the clerk may apply to the Director of Finance for court costs.

Yours very truly,

SI GARRETT

Attorney General

February 18, 1952

Hon. B. K. Prater

Personnel Director

Calhoun County Civil Service

120 East 10th Street

Anniston, Alabama

Calhoun County — Merit System — Counties.

1. It is the duty of the Civil Service Board of Calhoun County to fix the minimum and maximum salary range for each class of employees.

2. The fixing of the minimum and maximum salary range for each class of employees is such a rule or regulation that requires a public hearing to become effective under the provisions of Act No. 138, General Acts 1951, page 363.

3. The salary to be paid each employee shall be determined by the appointing authority within the salary range for each class of employees as fixed by the Civil Service Board.

Opinion by Assistant Attorney General Galloway.

Dear Sir:

Your request for an official opinion, bearing date of September 17, 1951, is as follows:

"As Personnel Director of Calhoun County Civil Service, I respectfully request your opinion on Act No. 138 Senate Bill No. 294 by McCary, an Act to provide for Calhoun County and the Incorporated municipalities therein of more than five thousand (5,000) inhabitants a County wide Civil Service system, the part of Section 9 which reads, 'A rule or regulation may be made effective **only** after a public hearing is held on the proposal thereof and after a certified copy thereof has been filed with the Personnel Director.'

"If the Civil Service Board proposes to grant an increase to the

present Anniston City and Calhoun County employees, does the Board have to hold a public hearing with the Anniston City Commission and the Calhoun County Commission before salary increases can be granted?"

Act No. 138, General Acts 1951, page 363, approved June 29, 1951, provides in part as follows:

"Section 9. The board shall have power to make rules and regulations governing examinations, eligible registers, appointments, transfers, salaries, promotions, demotions, annual and sick leave, and such other matters as may be necessary to accomplish the purposes of this Act. A rule or regulation may be made effective only after a public hearing is held on the proposal thereof and after a certified copy thereof has been filed with the personnel director The board shall: 3) fix a maximum and minimum salary for each class:

"Section 10. The salary to be paid each subordinate employee shall be determined by his appointing authority; and the salary to be paid each department head employee shall be determined by the county or municipal governing body; but in every case the salary paid shall be within the pay plan and pay rules and regulations established by the board and shall be no more than the board approves"

The provisions of Section 9, supra, grant to the Civil Service Board power to make rules and regulations governing salaries. Such a rule or regulation becomes effective only after a public hearing is held on the proposal, and a certified copy is filed with the personnel director. This section also requires the Board to fix maximum and minimum salary for each class.

Section 10, supra, provides that the salary for each employee is to be determined by the appointing authority within the salary range established by the Civil Service Board.

It is, therefore, my opinion that the Civil Service Board of Calhoun County does not have the authority to increase the salary of an individual employee. The Board may, however, increase or decrease the minimum or maximum salary range of a class of employees.

It is further my opinion that the said Civil Service Board has the duty to fix the maximum and minimum salary ranges for each class of employees, and that this establishment of a salary range is such a "rule or regulation" that requires a public hearing in order to become effective under the provisions of Section 5 supra. The Anniston City Commission and the Calhoun County Commission should be heard at these public hearings, but there is no provision in Act No. 138, supra, requiring them to be present.

Yours very truly,

SI GARRETT

Attorney General

February 18, 1952

Hon. Bill Dorrough, Commissioner

Department of Public Welfare

C A P I T O L

State Department of Public Welfare.

A proviso in Act No. 703, Section 7, General Acts 1951, page 1211, imposing certain restrictions on those "related by blood or by marriage" to certain officials or employees there described, applies to relatives by blood or marriage in any degree of relationship.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, dated September 13, 1951, is as follows:

"Act No. 703, General Acts of Alabama 1951, page 1211, approved September 5, 1951, reads in part as follows:

"provided that no person holding an elective public office, no person who is a candidate for election to a public office, no person who is an employee of the county department of public welfare, and no person who is related by blood or by marriage to any such officer, or employee, shall be a member of such county board of welfare."

"My question relates to the proper interpretation of 'related by blood or by marriage.' Does the proviso include all persons related by blood no matter how remote the degree of relationship by blood may be? Further, does relation by marriage extend merely to the spouse or does it extend to those persons who are related by blood to the spouse?"

Your request concerns an interpretation of the proviso in Act No. 703, Section 7, General Acts 1951, page 1211, approved September 11, 1951, which proviso is set out in the request. The phrase, "related by blood or by marriage," should be interpreted as including all persons related by blood or marriage no matter in what degree of relationship those persons may stand. There is no limitation in the act as to degrees. For reference as to degrees of relationship, see the chart set out by the Alabama Supreme Court in *Owen v. State*, 255, Ala. 354, 51 So. 2d. 541.

In this connection, for purposes of comparison, I call your attention to the provisions of Title 12, Section 29, Code of Alabama 1940:

"§ 29. Letting contracts to relatives or employing relatives of commissioners, board of revenue or similar governing body; penalty for.— Any member of any commissioners' court, board of revenue or similar governing body who shall award any contract in which the county of such commissioner or member of board of revenue or similar governing body is interested to any person **related, either by blood or marriage within the fourth degree** to such commissioner or member of board of revenue or similar governing body, or who shall employ any such rela-

tive to do any work for said county, or to act as agent for any such member in any work in which such county is interested, shall be guilty of misdemeanor and, on conviction, shall be fined not less than ten dollars nor more than one hundred dollars." (Emphasis supplied.)

Section 29, supra, indicates that where the Legislature intended to restrict the degree of proscribed relationship, the Legislature did so explicitly. The absence of any limitation as to degree of relationship in the act under discussion is all the more significant when considered in juxtaposition to Section 29, supra, for an anti-nepotic purpose lies behind both statutory provisions.

Section 29, supra, as interpreted by this office in Biennial Report of Attorney General, 1926-28, page 292, indicates that the phrase "related by blood or by marriage" includes persons related to both spouses. And, of course, I have indicated that there is no limitation as to degree of relationship—whether the relationship is by blood or by marriage.

Yours very truly,

SI GARRETT

Attorney General

February 18, 1952

Hon. Hunter Phillips

Judge of Probate

Choctaw County

Butler, Alabama

Coroners — Statute of Limitations — Counties — Costs and Fees.

1. A coroner is entitled to coroner's fees under the provisions of Title 11, Section 94, Code of Alabama 1940, and not physician's fees under the provisions of Title 15, Section 88, Code of Alabama 1940.

2. Coroners' fees accrue at the time that services are performed, and claim for such services must be presented to the county governing body within twelve months.

3. Fees accruing to a coroner during his lifetime may be claimed by his estate within twelve months from the time such claims accrued, but the death of the coroner does not interrupt the running of the statute of limitations.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of October 10, 1951, is as follows:

"I am enclosing copy of statement for coroner's fees due Dr. T. C. Elliott, deceased. I am also enclosing the claim signed by Mrs. Jeanne M. Elliott as executrix.

"Dr. Elliott was elected coroner in 1947 and served in this capacity until his death, but he never filed a claim for his services. After his death the executrix filed the enclosed claim for services that were done by Dr. Elliott during his entire term of office. The claim was filed according to Title 15, Section 88, and after checking this section and the opinions that have been rendered, I decided it would not be legal to pay this claim, however, Dr. Elliott was a physician and I thought he might be entitled to compensation under this section.

"I will appreciate it if you will give me an official opinion advising me as to the fees the county can pay under a circumstance of this kind. I will also appreciate it if you will advise me if we can pay the fees during his whole term of office or if any part of the claim will be barred under Title 12, Section 118 of the 1940 Code."

The claim referred to in your inquiry need not be set out in full. It is sufficient to state that the claim is in the amount of \$101.30. The claim enumerates thirteen instances during the period February 1, 1947, to November 3, 1950, where Dr. Elliott, as coroner, traveled a certain number of miles and examined bodies. In each instance, a fee of five dollars is charged for the examination of the body and the amount of ten cents per mile is added.

It is further noted that the claim was filed in the Commissioners Court of Choctaw County on August 7, 1951, and is signed "Estate of Dr. T. C. Elliott" by Jeanne M. Elliott Executrix." I am of the opinion that all of the items of the claim except the last item (November 3, 1950—Arthur Brown, Lisman, Alabama) are barred by the statute of limitations of one year. Title 12, Section 118, Code of Alabama 1940.

Your inquiry states that Dr. Elliott was elected coroner in 1947 and served in this capacity until his death. As such coroner, he was not entitled to receive compensation under the provisions of Title 15, Section 88, Code of Alabama 1940, because this section provides for the payment of fees to a physician who is summoned by the coroner to make a post mortem examination. The fee set for the physician is five dollars, together with ten cents a mile for traveling expenses. Dr. Elliott, however, was not a physician summoned by the coroner, but was the coroner himself; and is, therefore, not entitled to physician's fees, but is entitled to coroner's fees as provided for in Title 11, Sections 94-95, Code of Alabama 1940. Biennial Report of Attorney General, 1934-36, page 91.

A claim for coroner's fees is the type of claim which must be audited and allowed by the county governing body. See *Jefferson County v. Abernathy*, 139 Ala. 264, 35 So. 881. Such claims must be presented to the county governing body within twelve months from the time they accrue, or else they are barred. Title 12, Section 118, Code of Alabama 1940; Quarterly Report of Attorney General, Vol. 26, page 134.

Each of the items of the claim accrued at the time the service was per-

formed, which was during the life of Dr. Elliott; and under such circumstances, the death of Dr. Elliott would not interrupt the running of the statute of limitations of one year. 37 C. J., Limitations of Actions, Section 443, page 1034. You are, therefore, advised that all of the items of the claim except the last item were more than twelve months old upon the filing of the claim on August 7, 1951, by the executrix of the estate of Dr. Elliott.

As to the last item of the claim, you are advised that the estate of the former coroner is entitled to receive a fee of \$2.50 "For holding an inquest when ordered by a judge of a court of record or by the circuit or county solicitor," and also entitled to five cents for each mile traveled.

It is my opinion that the county governing body of Choctaw County may allow the last item of the claim if the amount is amended in accordance with Title 11, Section 94, Code of Alabama 1940.

Yours very truly,

SI GARRETT

Attorney General

February 18, 1952

Hon. Roy O. Hill,
Clerk, Circuit Court
Houston County
Dothan, Alabama

Counties — Houston County — Jurors and Juries — Sheriffs.

1. The probate judge has authority to purchase a city directory for the use of the clerk of the jury commission under Title 30, Section 26, Code of Alabama 1940.

2. The Board of Revenue of Houston County has authority to purchase a city directory for the sheriff of that county under the provisions of Act No. 11, Local Acts 1945, page 8.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion, bearing date of September 14, 1951, is as follows:

"A new city directory has been published for Dothan and most of Houston County. A directory was ordered by the President of the Houston County Jury Commission for the use of the clerk of the Jury Commission and the Probate Judge refuses to pay for it, stating that he has an opinion from the Attorney General that he cannot pay for city directories for county officials.

"Title 30, Section 24, reads in part as follows: 'The jury commission shall require the clerk of the commission to scan.....any city directories.....' and in Section 24 of the same Title, there is the following. 'The judge of probate of every county shall, upon the request of the commission, purchase the necessary books——— and things of all kinds required by the commission.....'

"A city directory is an absolute necessity for the proper compilation of a jury roll for this county of approximately 50,000 people, and, when the law requires the clerk to use any city directories available and requires the Probate Judge to pay for things of all kinds required by the jury commission, and a city directory is the one thing mentioned for the clerk of the commission to use that cannot be used without the purchase of one, it does seem to me that the law certainly impliedly contemplates the purchase thereof for the use of the Jury Commission. I feel like the opinion recently given the Judge of Probate of this county with reference to the purchase of directories for various officials of the county was written without giving special consideration to the law governing Jury Commissions, and that on reconsideration by your office, giving special attention to the laws quoted above, you will render an opinion giving the Probate Judge of this county authority to pay for a City Directory for the use of the Clerk of the Jury Commission.

"Inasmuch as the publisher seems to be right anxious about his pay for this directory, it is respectfully requested that you render an opinion soon.

In your memorandum to me attached to the above request, you also make the following inquiry:

"Please let me call your attention to Local Acts 1945 page 8 which puts the Sheriff of this county on a salary and provides for the County to provide the Sheriff with '.....books, stationery and OTHER NECES-SITIES.....' This seems to fall right squarely in line with the opinion written to the Board of Revenue of Tuscaloosa County as found in Quarterly Report, Volume 1 on page 69.

"If you should feel, on consideration of the matter in this light, that the county can pay for a directory for the Sheriff's office, you might include the opinion in the one you write to me with reference to a directory with the jury commission."

The probate judge has authority to purchase a city directory for the use of the clerk of the jury commission under Title 30, Section 26, Code of Alabama 1940. This section provides that the judge of probate "shall upon the request of the president of the commission, purchase . . . the necessary cards, stationery, and things of all kinds required by the commission, and shall draw his warrant on the county treasury for the payment of the same."

This office has held that a local act (Act No. 93, Local Acts 1936, page 53), authorizing the payment of "all other costs and expenses of operation of the office of sheriff, including office supplies, equipment and furniture . . ." afforded ample basis for the purchase of city directories of the cities within the county for the use of the sheriff. Quarterly Report of Attorney General, Vol. 13, page 69.

The clerk of the jury commission is required under Title 30, Section 24, Code of Alabama 1940, to scan registration lists, telephone directories, city direc-

tories, and any and every other source of information. Since the clerk is required by statute to use a city directory, the provision of Section 26, *supra*, authorizing the purchase of "things of all kinds required by the commission" is broad enough to permit the purchase of a city directory.

The opinion rendered by this office on November 4, 1947, to Hon. J. A. Logue, Judge of Probate, Houston County (Quarterly Report of Attorney General, Vol. 49, page 93), holding that no authority of law could be found allowing the county to provide a city and county directory for the various offices in the county courthouse, did not consider the provisions of Section 26, *supra*, and therefore is not controlling in the instant case.

The letter of this office to Hon. J. A. Logue, Judge of Probate of Houston County, dated June 25, 1951, which is in conflict with the above conclusion, is hereby withdrawn.

With reference to your second inquiry concerning the purchase of a city directory for the sheriff's office, the Board of Revenue of Houston County is empowered by Section 3 of Act No. 11, Local Acts 1945, page 8, to provide the sheriff "with necessary quarters, books, stationery, and other necessities and conveniences," The language of this act, though not identical with the language used in the local act under consideration in the opinion in Vol. 13, page 69, *supra*, is at least as broad in its coverage. It is, therefore, my opinion that the Board of Revenue of Houston County has authority to purchase a city directory for the sheriff's office.

Yours very truly,

SI GARRETT

Attorney General

February 18, 1952

Hon. Lee M. Otts

Judge, Inferior Court

Escambia County

Brewton, Alabama

Juvenile Courts — Inferior Courts — Desertion and Nonsupport
— Clerks of Inferior Courts — Costs and Fees — Escambia County.

1. No costs may be taxed in the Inferior Court of Escambia County, Alabama, in juvenile cases or cases of desertion and non-support.

2. In juvenile court cases, the sheriff is entitled to receive from the county circuit court fees and his actual expenses for feeding said juveniles.

3. In desertion and nonsupport cases, the sheriff is entitled to receive a suitable allowance from the county governing body based on the actual expenses incurred in his services

4. The circuit clerk, ex-officio clerk of the Inferior Court of Escambia County, is not entitled to receive fees in juvenile cases, or desertion or non-support cases in said court, but may be reimbursed by the county governing body for actual expenses incurred by order of the court in juvenile cases.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of January 11, 1952, is as follows:

"RE: Payment by County of Clerk and Sheriff's cost in Juvenile Court.

"I should like your opinion as to whether or not the County should pay out of the general fund the Clerk and Sheriff of the County for their expenses and fees in juvenile matters when the Inferior Court is sitting as a Juvenile Court.

"The Inferior Court of Escambia County, Alabama, was created by Act No. 665 during the regular session of 1951 of the State Legislature. Said act was approved on September 4, 1951. This Court was given jurisdiction in juvenile matters and the Juvenile Court then in existence was abolished. In Subsection 5 under Section 7 of the Act it was provided that no cost shall be taxed in juvenile cases.

"Title 13, Section 383 of the 1940 Code of Alabama is as follows:

"Officer serving process, etc., under juvenile courts; cost and fees of. —All officers serving process from juvenile courts, or feeding prisoners committed by, or held for or under such courts, shall receive the same costs, fees, and compensation payable in the same manner and from the same source as are now allowed and paid for like services with respect to process issued by the circuit courts or courts of like jurisdiction, and for feeding prisoners committed by circuit courts or courts of like jurisdiction.

"Title 13, Section 380 of the 1940 Code of Alabama, as amended in 1949, is as follows:

"Clerks.—The judge of the juvenile court may appoint as clerk of the court any probation officer or a clerk of the probate court. The judge may also appoint as deputy clerk of the court any other probation officer or clerk of the probate court. Such clerk and deputies shall receive no additional remuneration for their services to the juvenile court; provided, in counties having a population of not less than 23,000 nor more than 25,000 according to the most recent federal census, such clerks and deputies shall be entitled to receive six hundred dollars per annum, to be paid in equal monthly installments out of the general fund of the county.

"Title 13, Section 352, Subsection 8 is in part as follows:

"The sheriff of the county shall serve all papers directed by the juvenile court or judge thereof to be served by him, and a suitable allowance shall be made to him by the court of county commissioners, or

board of revenue, or other governing body, of such county for his actual and necessary services.

"I should like to know if these costs and fees should be paid by the county in cases of desertion and nonsupport as well as other cases involving juveniles. This Court has three separate divisions, namely law, criminal and juvenile."

In my opinion, the Clerk of the Inferior Court of Escambia County, Alabama, is not entitled to receive fees in cases involving juveniles, nor in desertion or nonsupport cases. The sheriff, however, is entitled to receive circuit court fees for his services in the juvenile court and his expenses incurred in feeding juveniles.

The local act establishing "The Inferior Court of Escambia County, Alabama," vests said court with jurisdiction over all causes cognizable before the juvenile court. Section 2, Act No. 665, General and Local Acts 1951, page 1143, approved September 4, 1951.

Such jurisdiction granted to the inferior court, of course, includes that jurisdiction provided for in Title 13, Section 350, et seq., Code of Alabama 1940, and Title 34, Section 89, et seq., Code of Alabama 1940. The local act, supra, further provides in Section 7, Subsection 5, that "no costs shall be taxed in juvenile cases." Since the provisions of the local act, supra, should be construed with the provisions of the general law that have application (*Sanders v. Young*, 220 Ala. 94, 124 So. 225), it is to be noted that Title 34, Section 89, et seq., supra, covering prosecutions for desertion and nonsupport, provide (Section 102) that no costs of any kind may be taxed in desertion and nonsupport cases. Therefore, I find express statutory provisions prohibiting the clerk from taxing costs in juvenile cases. Section 7, Subsection 5, Act No. 665, supra. The same is true in reference to desertion and nonsupport cases. Section 102, supra. This, of course, means that the clerk of the circuit court, who is an ex-officio clerk of the Inferior Court of Escambia County, Alabama (Section 11, Act No. 665, supra), is not authorized to issue a cost bill in juvenile or domestic relations cases to either the plaintiff or defendant in such proceedings.

Although the clerk of the said inferior court cannot tax costs in such cases against either party, the statutes provide that the sheriff or other officer "serving process from juvenile courts, or feeding prisoners committed by, or held for or under such courts, shall receive the same costs, fees, and compensation payable in the same manner and from the same source as are now allowed and paid for like services with respect to process issued by the circuit courts or courts of like jurisdiction, and for feeding prisoners committed by circuit courts or courts of like jurisdiction." Title 13, Section 383, Code of Alabama 1940. This section has been construed with a part of Title 13, Section 351, Code of Alabama 1940, which provides:

"All expenses necessary or appropriate to the carrying out of the purposes and intent of this chapter and all expenses of maintenance and care of children that may be incurred by order of the court in carrying out the provisions and intent of this chapter, shall be valid charges and preferred claims against the county and shall be paid by the county treasurer when itemized and sworn to by the creditor or other persons knowing the facts in the case, and approved by the judge."

This office has held, therefore, that the sheriff is entitled to circuit court fees for executing process in the juvenile court, and is entitled to actual expenses for the feeding of juvenile persons in custody. Quarterly Report of

Attorney General, Vol. 32, page 92. The sheriff or other officer executing the process of juvenile court or feeding juvenile persons in custody or under control of the court should present his claim to the county governing body, when itemized and sworn to, and approved by the judge of the inferior court. The county is authorized to pay such expenses and fees, as provided by Sections 351 and 383, supra. Quarterly Report of Attorney General, Vol. 32, page 92.

You are further advised that although the sheriff can obtain no costs in desertion and nonsupport cases, he may apply to the county governing body for a suitable allowance based on the actual expenses incurred in his services. Section 102, supra.

I find no provision of law whereby the clerk of the Inferior Court of Escambia County, Alabama, can apply to the county governing body for fees in juvenile or desertion and nonsupport cases. The clerk's services in such cases were probably intended to be compensated for out of his ex-officio fees as circuit clerk. See Title 11, Section 24, Code of Alabama 1940, as amended by Act No. 224, General Acts 1943, page 188. If the clerk incurs expenses in carrying out the orders of the court in juvenile cases, arising under the provisions of Section 350, et seq., supra, he as any other person, may apply to the county governing body for reimbursement of the actual expenses incurred under the order of the court. Section 351, supra.

I do not see that Title 13, Section 380, Code of Alabama 1940, as amended by Act No. 574, General and Local Acts 1949, page 905, has any relation to your inquiry, for the reason that said section provides no compensation to the clerk of the juvenile court in a county having the population of Escambia County. Furthermore, Act No. 665, supra, provides for a special clerk of the Inferior Court of Escambia County, and there is no necessity to appoint a clerk of the probate court as such clerk.

Yours very truly,

SI GARRETT

Attorney General

February 18, 1952

Hon. Roy L. Wallace, Mayor

City of Gadsden

Etowah County

Gadsden, Alabama

Veterans — Licenses — Exemptions.

Veterans eligible for exemption from payment of business or occupational license taxes, as provided by Act No. 353, General Acts 1945, page 570, as amended by Act No. 698, General Acts 1947, page 535, may claim entire exemption each taxable year regardless of length of time for which license is valid.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of September 18, 1951, is as follows:

"I would like to submit to you under the authority of Title 55, Section 240, the following questions upon which the Board of Commissioners of the City of Gadsden has requested an opinion.

"Where the license ordinance and schedule of the City of Gadsden requires a privilege license for any person, firm, company, association or corporation, to engage in business in the City of Gadsden for the year commencing January 1, 1951, and ending December 31, 1951, and the City of Gadsden permits such license to be prorated and paid semi-annually, that is, 50% of the amount of said license to be paid before February 1st of such year and 50% of the amount of such license to be paid before July 1st of such year, is a veteran entitled to be allowed credit for a full exemption as set out in Title 51, Article 15, Code of Alabama 1940, where he buys only the first half year's license; where the license is bought only for the last half year? In crediting or allowing the veteran his exemption, as provided by law, should the amount of the exemption be pro-rated according to the period of time for which such license is purchased on a yearly basis?"

The statutory provisions to which you refer (Title 51, Article 15, 1949 Cumulative Pocket Part, Code of Alabama 1940), exempting veterans of World War II from payment of certain licenses, is Act No. 353, General Acts 1945, page 570, as amended by Act No. 698, General Acts 1947, page 535.

Section 1 of Act No. 353, as amended, *supra*, is in part as follows:

"Every bona fide permanent resident of the State of Alabama who has served 90 days or more in the armed forces of the United States between September 16, 1940, and the termination of World War II by the signing of a definitive treaty of peace shall, upon sufficient identification, and upon sufficient proof of being a permanent resident of this State, and upon the production of an honorable discharge from or other proof of the honorable termination of such service, be exempt from business or occupational license taxes for a period of six years after the effective date of this Act or for a period of six years after his or her discharge from or termination of service, whichever is later, to the extent and subject to the conditions herein specified....."

Section 4 of Act No. 353, *supra*, is as follows:

"Each such veteran who shall engage in or carry on any businesses or occupations for which license taxes are prescribed by any municipality in Alabama shall be entitled to licenses from the municipality to engage in or carry on those businesses or occupations upon the payment of the license taxes prescribed, less, as regards each veteran, such portion of the license taxes as shall not exceed \$35.00. However, no such veteran may claim the exemption in more than one municipality."

In answer to your inquiry, it is my opinion that a veteran who meets the qualifications for this exemption is entitled to a deduction of \$35.00 from the amount of his license tax each year. It is also my opinion that this deduction

may be applied in full to the purchase of a license valid for only six months. Should the issuance of such a six months' license exhaust the exemption, the licensee then, of course, is not entitled to any further deduction when and if he purchases a license for the remaining half of the year. Similarly, if a qualified veteran has made no claim for deduction in any taxable year until he purchases a license valid for the second half of the year, he may, at that time, claim the entire \$35.00 deduction.

This particular question has not been ruled upon by the courts of this State. However, the customary period for taxing and licensing purposes is an annual one. Title 51, Sections 850 and 851, Code of Alabama 1940. Section 4 of Act No. 353, supra, establishes a maximum of \$35.00 for the exemption from municipal license taxes which Section 1 of this Act, as amended, grants to qualified veterans for a period of six years. When taken together, these two sections seem to indicate that the exemption allowed is a maximum amount of \$35.00 each year, for a period of six years. There is no further limitation on this deduction.

Your attention is called to Quarterly Report of Attorney General, Vol. 60, page 162, in which it was held that a veteran, if exempt on the due date—October 1—of each year within the six year limitation period, was exempt for the entire taxable year, even though the end of that particular veteran's six-year exemption period might occur before the end of the current taxable year, and thus, while his license was still in effect. Your attention is further called to Quarterly Report of Attorney General, Vol. 40, page 50, in which it was stated that the \$35.00 exemption might be applied to the payment of two or more licenses for the same taxable year in the same municipality. These opinions show that the exemption is an annual, lump-sum exemption.

It is, therefore, my opinion that the \$35.00 deduction may be claimed, in any taxable year, until exhausted; provided, of course, that the exemption may not be claimed in more than one municipality. In other words, although the City of Gadsden has provided for payment of the license tax in two installments, the veteran's exemption need not be so prorated.

Yours very truly,

SI GARRETT

Attorney General

February 18, 1952

Hon. J. M. McCullough, Jr., Director

State Department of Corrections and Institutions

Montgomery 4, Alabama

Department of Corrections and Institutions — Prisons and Prisoners — Convicts — Funds.

1. It is the duty of the Director of the Department of Corrections and Institutions to pay to every convict upon discharge the cash allowances and benefits provided by Title 45, Sections 54 and 55, Code of Alabama 1940.

2. The Director of the Department of Corrections and Institutions is authorized to establish a Departmental Revolving Fund, and promulgate rules and regulations for the payment to convicts upon discharge the cash allowances and benefits provided by Title 45, Sections 54 and 55, Code of Alabama 1940.

Opinion by Assistant Attorney General Hardin.

Dear Sir:

Your request for an official opinion, bearing date of December 13, 1951, is as follows:

"RE: Departmental Revolving Fund

"Under Title 45, Section 55, this Department is required to furnish cash transportation as well as additional cash payments to prisoners released from the penal institutions. As you no doubt know, this Department has five separate prisons and in addition the Highway Department has twenty-seven road camps from which prisoners are released monthly. Heretofore the road camps and prisons have been using prisoners' money on deposit to make these cash disbursements and of course refunds are made when a warrant is drawn on the State Treasury.

"We have been instructed by the Examiners of Accounts that this method should be ceased. If this money is held in escrow for the benefit of the prisoners confined within the institutions it should not be used by the Department for any type disbursement other than to refund the prisoners upon release. In order to comply with this request, it will be mandatory for the Department to establish a revolving fund at the different institutions in order to meet the requirements as stated in the above section of Title 45.

"This matter has been discussed with the State Comptroller and we were informed that no provision is provided for the establishment of these revolving funds. However, under Title 45, Section 7, et cetera, powers are given the Director of this Department to authorize the necessary or convenient rules and regulations to carry out the functions and duties of the Department.

"We would appreciate an opinion from you as to the authority and

the legality of establishing these revolving funds in the several institutions as we feel that they are necessary in order to carry out the functions and duties of the Director of this Department. It seems that if there is no definite provision within the law prohibiting this action we would have the legal right to establish a revolving fund at each institution in the amount necessary to perform the duties required."

It is provided by Title 45, Section 54, Code of Alabama 1940, that each convict, at the expiration of his term of confinement, must be discharged from the penitentiary, and must be furnished with a decent suit of clothes, and with money sufficient to reach his destination, not exceeding \$10.00. It is further provided by Title 45, Section 55, Code of Alabama 1940, that:

"In addition to the cash transportation and supplies to be furnished to state convicts upon their lawful discharge from penal servitude, as now required under existing laws, there shall be allowed and paid to each such convict whose term does not exceed five years, the sum of ten dollars in cash, and to each such convict whose term exceeds five years, the sum of ten dollars plus an additional sum in cash at the rate of two dollars per annum for each additional year, or fractional part of a year of not less than six months, of actual penal service after conviction. The said additional allowances and payments may be made as cash allowances and payments are made under existing laws."

The payment of the monetary benefits mentioned in these two statutes is mandatory as is the requirement that the same be paid in cash. Section 55, supra, provides that said allowances and payments are to be made as cash allowances and payments are made under existing laws.

You advise that heretofore such cash allowances and payments have been made from money belonging to the prisoners incarcerated at the various penal institutions on deposit with the officer in charge thereof, and that subsequent refunds have been made of this money. You state that the Department of Examiners of Public Accounts had advised that this practice be discontinued and I am in accord with these instructions. Title 45, Section 31, Code of Alabama 1940, requiring that the officer in charge of any prison camp must take in charge any property or money or other thing of value in the possession of any convict at the time of delivery of such convict to him, in no way authorizes or allows the use of such money or property by such officer for any purpose. In my judgment, it is only contemplated that such officer retain such money or other property in custody for the use and benefit of the depositor upon his subsequent discharge, with provision being made for the disposition of such money or property in the event of the death of the convict while in custody.

Having arrived at such conclusion, the question naturally arises as to the manner or method to be utilized by the Department of Corrections and Institutions in carrying out the provisions of the law regarding the payment of such cash allowances to the discharged prisoners. As stated, it is provided by Section 55, supra, that such cash allowances and payments may be made as cash allowances and payments are made under existing laws. I find it impossible to give any meaning to this provision, for the reason that there is no existing law providing for cash allowances and payments by the State. The statutes governing the operation of the Division of Controls and Accounts only make provision for the issuance, by the Comptroller, of warrants drawn upon the State Treasury, no provision being made for cash allowances and payments.

In the light of this situation, it is obvious that, in order for the Director of the Department of Corrections and Institutions to carry out the require-

ments of Sections 54 and 55, *supra*, relative to the payment of cash monetary allowances to discharged prisoners, some provision must be made for a reasonable and sufficient amount of cash to be available to the Director for this purpose. In my judgment, a duty is imposed upon the Director to insure the payment of such cash allowances; and it is my further judgment that, by the imposition of such duty and responsibility, the Legislature, by necessary implication, vested in the Director the power and authority to fulfill such duty and responsibility. Such power and authority, in my opinion, is to be found in Title 45, Section 7, Code of Alabama 1940, providing, in pertinent part, as follows:

“ . . . The director shall have all power and authority or convenient to carry out the functions and duties of the department. . . . ”

Furthermore, Title 45, Section 8, Code of Alabama 1940, vests further power and authority in the Director, said statute providing as follows:

“The director shall have power and authority to establish and promulgate rules and regulations (including amendments and repeals thereof) with respect to the manner of performance of all functions and duties of the department, which rules and regulations shall be reasonably calculated to effect the expeditious and efficient performance of such functions and duties and shall not be in conflict with applicable statutes.”

Considering this specific statutory authority of the Director in conjunction with the authority I feel to be vested in him by reason of the duty imposed upon him by Sections 54 and 55, *supra*, it is my opinion that such officer is authorized to establish a Departmental Revolving Fund to be used for the specific and sole purpose of paying to discharged prisoners the cash allowances and benefits allowed by Sections 54 and 55, *supra*. Such Departmental Revolving Fund should be administered by the Director pursuant to rules and regulations promulgated by him under the authority of Section 8, *supra*, such rules and regulations being reasonably calculated to effect the expeditious and efficient performance of the duties imposed upon him with reference to the payment of the cash allowances and benefits here considered.

Inasmuch as your request for opinion inquires concerning the establishment of some thirty-two revolving funds, I feel it well to point out that the conclusion reached in my opinion here rendered contemplates only the establishment of a single Departmental Revolving Fund, to be utilized for the sole purpose here mentioned, subject to rules and regulations promulgated by the Director. I likewise call your attention to the provisions of Title 45, Section 5, Code of Alabama 1940, requiring bond of all officers and employees of the Department and those institutions under its charge or control, who may be charged with the handling of any public moneys. In the administration of this Departmental Revolving Fund, you will, of course, be governed by the provisions of this latter statute.

Yours very truly,

SI GARRETT

Attorney General

February 19, 1952

Hon. Alvis G. Briscoe

Tax Collector

Morgan County

Decatur, Alabama

Ad Valorem Taxes — Taxation — Tax Collectors.

Where boats are properly assessed for ad valorem taxes in one county and then are moved to another county before taxes become due and payable, the amount of the tax may be collected by levying upon the taxpayer's property in accordance with the provisions of Title 51, Section 219, Code of Alabama 1940.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of October 11, 1951, is as follows:

"Last year the Morgan County Board of Equalization assessed all boats at the Decatur Boat Harbor. Before the 1951 tax collection began, October 1st, these boats were moved to a new harbor in Limestone County. Do I as Morgan County Tax Collector have the same recourse as any other personal property to collect on these boats that were assessed by the Morgan County Board of Equalization. These boats have never been assessed heretofore.

"Should I collect the amount the Board has set up. An immediate reply will be appreciated."

The answer to your inquiry is in the affirmative.

I assume that the boats in question were properly assessable in Morgan County, under the provisions of Title 51, Section 21 (c), Code of Alabama 1940. Since they were removed to another county before the date on which the taxes became due and payable the provisions of Title 51, Section 219, Code of Alabama 1940, became applicable. This latter section provides that, when the collector has information that any person owing taxes in his county, whether due or not, has left the county, the collector shall, by proper procedure, cause a writ of fieri facias to be issued and, after notice and failure to satisfy taxes, fees, and costs due, shall cause said writ to be executed in any county in which the taxpayer has any property.

You do not state whether or not the owners of the boats in question have left Morgan County. However, although Section 219, supra, sets out the procedure to be followed "when any person owing taxes in his county, whether due or not, has left the county," this section has nevertheless been construed prescribe the proper procedure for realizing taxes owed by the original taxpayer, even though there has been no removal of said taxpayer. Quarterly Report of Attorney General, Vol. 57, page 51.

It was pointed out in this opinion that, under Title 51, Section 884, Code of Alabama 1940, the State has a lien upon real and personal property owned by any taxpayer for the payment of all taxes assessed against him. This lien attaches on the 1st day of October of each year, when property becomes assessable, and continues until taxes are paid. The opinion stated that Sections 884 and 219, *supra*, must be construed together; and, consequently, that the operation of Section 219 is not confined to a situation where the original taxpayer has left the county.

It would seem, therefore, under the assumptions made above, that you are authorized to take the necessary steps to cause to be collected the amount of tax due, in accordance with the procedure outlined in Section 219, *supra*. That is to say, with respect to the collection of taxes due, you have the same recourse in the instant situation as in a case where personal property of any other type is involved.

Yours very truly,

SI GARRETT

Attorney General

WHS:po

February 19, 1952

Hon. M. C. (Jack) Hayes

Tax Collector

Chilton County

Clanton, Alabama

Counties — Tax Collector — Taxation — Ad Valorem Taxes —
Commissions.

Taxes levied by a county governing body under authority of Constitution of Alabama 1901, Amendment 72, are "special taxes" within the meaning of Title 51, Section 191, Code of Alabama 1940, for the purpose of computing the tax collector's commission.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of June 4, 1951, is as follows:

"There has been recently levied by the Court of County Commissioners of Chilton County, Alabama, a **special four-mill tax for hospital purposes in Chilton County**. This tax is being collected in this county for the first time this year, and will be due on real estate on October 1, 1951. Title 51, Section 191 of the Code of Alabama of 1940, provides for **Tax Collector's commissions**, and has the following sentence:

"He shall be entitled to receive 2% on all collections made by him of special taxes, whether such special taxes be levied by the State or County, to be paid out of such special taxes."

"I hereby request your official opinion on the following question:

"1. Am I, as Tax Collector of Chilton County, Alabama, entitled to deduct out of said four mill hospital tax a sum equal to 2% of the amount collected by me as Tax Collector's commission?"

I am of the opinion that the answer to your inquiry should be in the affirmative.

The four mill tax to which you refer is levied under authority of Amendment 72, Constitution of Alabama 1901, proclaimed ratified November 15, 1948. This amendment permits certain counties (including Chilton County) to levy "a special county tax," not exceeding four mills, for the purpose of constructing, equipping, or maintaining public hospitals, if such tax is authorized by the voters of the county.

Title 51, Section 191, Code of Alabama 1940, after providing for the commissions of tax collectors on the collection of "general taxes," also entitles tax collectors to a commission of two percent on all collections of "special taxes." The only question at hand, therefore, is whether the aforementioned four mill tax is a "special tax," within the meaning of Section 191, supra.

As originally adopted, the Constitution of 1901 prescribed, in Section 215 thereof, a maximum rate of five mills for taxes levied by a county, with permission, however, to levy an additional special tax at a maximum rate of two and one-half mills for certain specified purposes. Various amendments to the Constitution of 1901, such as Amendment 72, supra, have authorized certain counties to levy other "special taxes." It would seem indisputable that it was upon the collection of such taxes that the two percent commission allowed by Section 191, supra, was intended to be calculated.

It is true that other so-called "special taxes," levied by local county governing bodies or by the Legislature by local act, have been held to be merely allocations, or directions to allocate, for specified purposes, portions of the monies in the general funds of the counties concerned. See e. g., Quarterly Report of Attorney General, Vol. 17, page 61; Quarterly Report of Attorney General, Vol. 17, page 347; Quarterly Report of Attorney General, Vol. 36, page 84. Such general funds are obtained by the regular five mill county levy authorized by Section 215, supra. Thus, the so-called "special taxes" which merely designate the purpose for which certain portions of that levy are to be spent are not additional taxes at all. Clearly, therefore, they are not within the intent of that part of Section 191, supra, which authorizes a two percent commission for their collection.

The present levy, however, is entirely different. It is an additional tax levied under authority of Amendment 72, supra, and is denominated a "special tax." It is my opinion, therefore, that the collection of such tax may be the basis of the two percent commission, as provided in Section 191, supra.

Yours very truly,

SI GARRETT

Attorney General

February 25, 1952

Mrs. Agnes Baggett

Secretary of State

C A P I T O L

Housing Authorities — Corporations — Secretary of State.

1. The charter of a corporation is not forfeited by reason of nonuse of its franchise for a period of five years, until such forfeiture has been judicially decreed.

2. The charter of the Housing Authority of Walker County, which was incorporated in 1942, has not been forfeited by reason of nonuse of its franchise for a period of five years, inasmuch as such forfeiture has not been judicially decreed.

Opinion by Assistant Attorney General Parker.

Dear Mrs. Baggett:

Your request for an official opinion, bearing date of July 19, 1951, is as follows:

"On March 17, 1942, there was filed for record in the office of Secretary of State application for certificate of incorporation for the Housing Authority of Walker County in pursuance of Title 25, Sections 5-30, Code of Alabama 1940. A certificate of incorporation was issued. In August of 1950 another application for certificate of incorporation for the Housing Authority of Walker County, Alabama was received. The office of Secretary of State informed the petitioners that such a corporation already existed on the records of this office, such certificate having been issued on March 17, 1942. The petitioners furnished this office with affidavits indicating that the 1942 corporation had not used its franchise for a period of more than five consecutive years and requested that the 1942 corporation be declared dissolved in accord with Title 10, Section 109, as amended. On August 30, 1950, the Secretary of State marked the 1942 franchise forfeited and issued a certificate of incorporation to the petitioners.

"The attorney for the Housing Authority of Walker County, the petition for which was filed and recorded in the office of Secretary of State on August 29th, 1950, has advised us that the U. S. Public Housing Administration in Atlanta states that Section 109 of Title 10, Code of 1940 does not apply to public corporations and that the action taken by the Secretary of State's office in accepting application and issuing a certificate of incorporation on August 29, 1950, was of no force and effect and that the original housing authority remains a corporate body and that the new authority is of no legal effect. The officials of the U. S. Public Housing Administration suggested to the attorney for the Housing Authority of Walker County of August 29, 1950 that he contact the Secretary of State's office suggesting that the Attorney General render an opinion as to the legal effect of the action taken by the Secretary of State in determining that the certificate of incorporation originally issued to The Housing Authority of Walker County, Alabama, had been forfeited by non user and that the records of the Secretary of State's office should be marked accordingly.

"We quote below from a letter written to this office under date of July 5th, 1951 from the attorney for the second housing authority:

"In March of 1950 certain citizens of this county thought it desirable that there be formed a County Housing Authority. We were asked to assist in the matter and proceeded to organize the authority which was called the Housing Authority of Walker County, Alabama. We duly filed the Authority's petition with the Secretary of State's office for certificate of incorporation. Miss Sibyl Pool then immediately informed us that there already existed such a corporation that was formed in 1942. We checked the records of the Probate Office of this County but could not find that the Certificate had been recorded. The records of the Board of Revenue also failed to reflect that a housing authority had been formed before. After further search it was discovered that the matter pertaining to the original housing authority was indexed under another heading. We then inquired around and found that the members appointed to the original housing authority were deceased or had all moved away with perhaps one exception. Mr. Kelley who was one of the Housing Commissioners originally appointed recalled being appointed but stated that the Authority never functioned, its activities having been terminated by reason of the war effort which curtailed all housing activities back in 1942. We discussed the matter with Miss Pool by phone and pointed out that in our opinion the Original Housing Authority had never functioned, so far as we could ascertain, and that the certificate of incorporation of the original Housing Authority had been forfeited by reason of non user for a period of more than five consecutive years as provided by Title 10, Section 109 of the 1940 Code of Alabama. Miss Pool wrote me on August 15, 1950, stating that evidence of the non user of the Original Corporate franchise should be furnished her office before any action could be taken toward issuance of a new Certificate of Incorporation to the Housing Authority of Walker County, Alabama.

"Accordingly, we forwarded affidavits indicating that there had been a non user of the franchise for a period of more than five consecutive years. Thereafter on August 30, 1950, Miss Pool wrote that the franchise had been marked forfeited and that new Certificate of Incorporation for the Housing Authority of Walker County, Alabama, had been issued."

"Please advise whether or not the provisions of Sections 109 of Title 10 of the 1940 Code of Alabama apply to public as well as private corporations and whether the certificate of incorporation issued on August 29, 1950 is proper and whether or not there is any other duty necessary on the part of this office in order that there may be properly existing a Housing Authority of Walker County."

It is a well established principle of law that a corporation is not to be deemed dissolved by reason of any misuser or nonuser of its franchises, unless default has been judicially ascertained and declared. **Importing and Exporting Company of Georgia v. Locke, et al.**, 50 Ala. 332.

"In *Sprowl v. Lawrence*, 33 Ala. 674, 690, it is said: 'It is laid down as an established principle that until the forfeiture of the character is judicially decreed, neither the forfeiture nor the cause of it can be inquired into in another suit, nor can the existence of the incorporation be questioned incidentally or collaterally.'-2 Kent 312, and cases there cited." **Bloch v. O'Conner Mining and Manufacturing Co.**, 129 Ala. 528, 29 So. 925.

Title 10, Section 109, Code of Alabama 1940, as amended by Act No. 346, General Acts 1947, page 229, is as follows:

"Section 109. FORFEITURE OF FRANCHISE BY NON-USER FOR FIVE YEARS. (A) The non-use of a corporate franchise for a period of five consecutive years is a forfeiture of such franchise. (B) Provided, however, that nothing herein contained shall be construed to constitute such voluntary non-use of a corporate franchise as to result in its forfeiture, if any of the managing officers of such corporation became engaged in or was called upon to render military services to the United States and thereafter, and as the result thereof such corporation temporary (sic) suspended operations, and provided further that said corporation shall have paid all of its franchise and other lawful taxes due the State of Alabama."

In interpreting the first sentence of Section 109, *supra* (formerly Section 127, Code of Alabama 1896), the Court said in *Bloch v. O'Conner Mining and Manufacturing Co.*, *supra*:

"There can be no question that the facts set up in the pleas, if true, show a forfeiture of the plaintiff's charter, and make it liable to have such forfeiture adjudged in a proper proceeding for the purpose, but the section of the Code above referred to, can scarcely mean more than this.

"Section 3417 of the Code makes provision for proceedings to vacate the charter and annulling the existence of any corporation, on specified grounds, one of which is, that the corporation 'Has forfeited its privileges or franchises by failure to exercise its powers,'—the same act or omission that is set up as a forfeiture in said section 1273, except in the latter section, the time of non-user is fixed at five consecutive years. Both sections are to be considered *in pari materia*. When so construed they mean, that if a corporation shall fail for five consecutive years to use its corporate franchises, it is liable to proceedings to forfeit its charter under said section 3417." (Section 3417 is now Title 7 Section 113, Code of Alabama 1940.)

See also *Mobile Temperance Hall Association v. Hall*, 189 Ala. 271, 65 So. 1020.

Inasmuch as there has been no judicial ascertainment that the charter of the Housing Authority of Walker County, which was incorporated in 1942, has been forfeited, and there has been no legal dissolution of the same, it still exists as a body corporate. Since the records in your office show that this charter has been marked forfeited, they should be corrected accordingly.

Title 25, Section 7, Code of Alabama 1940, concerning the creation of housing authorities, is, in pertinent part, as follows:

"The boundaries of such authority shall include said city and the area within ten miles from the territorial boundaries of said city, but in no event shall it include the whole or a part of any other city nor any area included within the boundaries of another authority."

In view of the provisions of Section 7, *supra*, until the housing authority incorporated in 1942 is forfeited by judicial decree, or by a legal dissolution, another housing authority may not legally be created which would include

within its boundaries any area included in the housing authority incorporated in 1942.

In reference to your duties generally in regard to an application for the incorporation of a housing authority under the provisions of Title 25, Sections 5-30, Code of Alabama 1940, as amended by Act No. 776, General and Local Acts 1951, page 1372, amending Title 25, Section 10, supra, your attention is called to an opinion of this office rendered to Hon. John Brandon, Secretary of State, under date of April 22, 1941, and found in Quarterly Report of Attorney General, Vol. 23, page 85. A copy of this opinion is enclosed for your convenience.

Yours very truly,

SI GARRETT

Attorney General

Enclosure

March 12, 1952

General Walter J. Hanna

The Adjutant General

State Military Department

C A P I T O L

Income Tax — Exemptions — Military and Naval Affairs.

1. The period of the participation of the United States in the Korean conflict constitutes "a time when the United States is at war with a foreign state," within the meaning of Act No. 34, General Acts 1945, page 42, amending Title 51, Section 374, Code of Alabama 1940.

2. The date of the start of the Korean conflict was June 24, 1950.

3. Compensation received from the United States by persons for full-time, active military service rendered to the United States during such time is exempt from income taxes levied by the State of Alabama.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of February 12, 1952, is as follows:

"Reference is made to that part of Section 374, Title 51, Code of Alabama (1940) as amended, which reads as follows: 'money paid by the United States to a person as compensation for military service rendered

by him to the United States at or during a time when the United States is at war with a foreign state or within six months after the termination of such a war shall not be subject to income taxes levied by the state of Alabama for the calendar year 1945 or any subsequent year.'

"Over eleven thousand members of the Alabama National Guard have been ordered into extended active military service in the Armed Forces of the United States since the outbreak of active hostilities in Korea in 1950, and great numbers of them have been or are now serving in combat in Korea or elsewhere in the Armed Forces, and some have been killed in action while so serving. I have received inquiries from Alabama National Guardsmen now in active Federal service as to whether the State income tax exemption statute cited above is now in force, as they are of the opinion that the United States has been 'at war' since the outbreak of active hostilities in 1950.

"Since I am required by Section 67, Title 35, Code of Alabama (1940) as amended, to render assistance to persons residing in Alabama, or other States, having claims against the State in connection with certain claims against the State arising out of, or by reason of, service in 'any of the wars concerning the United States or the State of Alabama,' and in order that I may furnish definite and official answers to inquiries concerning the above matter, your opinion is requested as to the following questions bearing upon the above statute:

"Within the meaning of the above quoted provisions of Section 374, Title 51, Code of Alabama (1940) as amended, is the United States 'at war'? If so, (1) since what date has the United States been 'at war'? (2) is the tax exemption provided by said statute available since the commencement of such war to persons who have rendered, or shall render during the continuance of such war, military service to the United States with respect to compensation received for such military service from the United States?

"Your opinion on the above questions at your very earliest convenience will be appreciated in order that I can give timely answers to my inquirers who are in active service outside the State, including the combat zone in Korea, to aid them in submitting their 15 March 1952 returns."

The exemption in Act No. 34, General Acts 1945, page 42, amending Title 51, Section 374, Code of Alabama 1940, attaches to income "paid by the United States to a person as compensation for military service rendered by him to the United States at or during a time when the United States is at war with a foreign state or within six months after the termination of such a war" The question involved in your inquiry is whether or not the participation by the United States in the present Korean conflict constitutes a time when the United States "is a war" with a foreign state. Our armed forces in Korea are, of course, a part of the United Nations forces, which are engaged in a police action to quell acts of aggression committed by the troops of North Korea and Communist China, in violation of the United Nations Charter; however, there has been no formal declaration of war by the Congress of the United States.

It is my conclusion that the period of the present Korean conflict—from June 24, 1950, to the present—is a "time when the United States is at war with a foreign state," within the intendment of Section 374, as amended, *supra*. Compensation received by persons from the United States for military service rendered to the United States during such time is exempt from income taxes levied by the State of Alabama.

The term "when the United States . . . is . . . at war with any foreign state" (which is almost exactly the same as the term used in this statute) has already been interpreted by this office, with reference to the present situation in Korea. See Quarterly Report of Attorney General, Vol. 62, page 15. This opinion concerned the exemption from poll tax allowed to qualified persons by the Constitution of Alabama 1901, Section 194½, as amended by an amendment proposed by Act No. 244, General Acts 1943, page 199, and proclaimed ratified November 17, 1944. Such an exemption is granted to a person who honorably served in the military service of the United States, "at any time, past or present or future, when the United States was, is or shall be at war with any foreign state." The opinion held that service during the period of the Korean conflict was service during a time "when the United States . . . is . . . at war with any foreign state."

A subsequent constitutional amendment to Section 194½, as amended, supra, proposed by Act No. 274, General and Local Acts 1951, page 558, and proclaimed ratified December 19, 1951, reenforced the conclusion of this office in the opinion above cited, that the period of the Korean conflict falls within the intent of the above quoted statutory language. This recent amendment made the exemption effective "at any time past, present or future, when the United States was, is or shall be engaged in hostilities, whether as a result of a declared war or not, with any foreign state."

In this connection, your attention is also called to an opinion of this office stated December 29, 1950, and found in Quarterly Report of Attorney General, Vol. 61, page 81. In this opinion it was held that the participation of the United States in the Korean conflict constitutes "an existing state of war" within the meaning of such term as used in Act No. 2, General Acts, Extraordinary Session, 1942, page 9, approved November 20, 1942, permitting county officials of the State of Alabama to be in the military service of the United States at the time when there is "an existing state of war" between the United States of America and any other country, without vacating their offices.

It would be well to point out, however, that the conclusion reached herein extends only to those whose military service involves a full-time, active duty status. To such persons, the tax exemption afforded by Section 374, as amended, supra, is available.

In answer to your inquiry with reference to the date on which the Korean conflict started, it was held, in a letter to Hon. James F. Laseter, Judge of Probate, Barbour County, dated May 3, 1951, that the start of the Korean conflict was June 24, 1950.

Yours very truly,

SI GARRETT

Attorney General

March 13, 1951

Hon. K. J. Griffith,
Judge of Probate,
Cullman County
Cullman, Alabama

Elections — Judges of Probate — Voters — Poll Tax and Poll List

1. When an election on proposed constitutional amendment is held on a day other than that of the general election, election officers should be appointed to hold such election.

2. When two or more elections or primaries are held on the same day, e. g., an election on a proposed constitutional amendment, a Democratic primary, and a Republican primary, the judge of probate must furnish election inspectors (officers) a separate list of qualified electors (official list of voters) for each such election or primary.

3. The judge of probate is not entitled to compensation for preparing the list of qualified electors (official list of voters), which must be furnished to the election inspectors (officers) immediately preceding every election or primary.

4. Under the provisions of Title 17, Section 55, Code of Alabama 1940, as amended by Act No. 385, General and Local Acts 1951, page 677, the judge of probate is authorized to employ clerical assistants for the preparation of each list of qualified electors (official list of voters) furnished the elections inspectors (officers), the compensation of such assistants to be paid as provided in said section.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion bearing date of January 10, 1952, is as follows:

"It has been brought to the writer's attention that there are some constitutional amendments to be voted on in the coming May primary and in his County, particularly, this raises some questions that I would like to have clarified. As you know, if the Republicans nominate any candidates, which in all likelihood they will, as they always have heretofore, and having received twenty per cent of the vote cast in the last General election they would have to nominate in a primary, these are the questions that I would like to have answered:

"1. Would the appointing authorities be required to appoint six election officials to handle the vote on the amendment?

"2. In the event question One is answered in the negative, and the Republicans hold a primary, who would have charge of the amend-

ment, the officers holding the Republican Primary, or the officers holding the Democratic Primary?

"3. In the event that questions One is answered in the affirmative, would I be required to furnish a poll list for the three officials holding the three separate elections?

"If this is answered in the affirmative, would I be entitled to pay, and at what rate, for making these three separate poll lists?"

In answer to your first inquiry, your attention is called to Section 284, Constitution of Alabama 1901, as amended by amendment proposed by Act No. 427, General and Local Acts 1951, page 762, and proclaimed ratified December 19, 1951, dealing with the holding of elections on constitutional amendments, which reads in pertinent part as follows:

" If such election be held on the day of the general election, the officers of such general election open a poll for the vote of the qualified electors upon the proposed amendments; **if it be held on a day other than that of the general election**, officers for such election shall be appointed; and the election shall be held in all things in accordance with the law governing general elections." (Emphasis supplied.)

You will note that if an election on proposed constitutional amendments is held on the same day as the general election, the election officers for the general election shall also serve as the election officers for the election on the proposed constitutional amendments. However, election officers must be appointed to hold such election if held on a day other than that of the general election. Since the election on the proposed constitutional amendment to be held on May 6, 1952, will not be held on the day of the general election, it is my conclusion that election officers should be appointed to hold such election. Biennial Report of Attorney General, 1930-32, page 813.

Since I have answered your first question in the affirmative, a consideration of your second question is unnecessary.

In regard to your third inquiry, it was held in an opinion dated December 5, 1941, and found in Quarterly Report of Attorney General, Vol. 25, page 180, that, under the provisions of Title 17, Sections 38 and 40, Code of Alabama 1940 (since amended by Act No. 482, General Acts 1947, page 331, in respects not here material), "the judge of probate must furnish to the election inspectors a list of the qualified electors (official list of voters) immediately preceding every election or primary." This opinion further held that, under the provisions of Title 17, Section 354, Code of Alabama 1940, the judge of probate "is specifically required to furnish such a list to the election inspectors (officers of the primary election) in each primary election."

In this connection, your attention is also called to an opinion of this office dated August 21, 1947, and found in Quarterly Report of Attorney General, Vol. 48, page 106, in which it was held that when an election on constitutional amendments and an election to determine the classification of a county as wet or dry are held on the same day, the probate judge must furnish a separate list of the qualified voters of the county for each election.

In view of the holding of the above opinions, it is my conclusion that

the judge of probate must furnish the election inspectors (officers) a separate list of qualified electors (official list of voters) immediately preceding every election or primary. In the instant case, three such separate lists should be furnished: One list to the election inspectors (officers) holding the election on the proposed constitutional amendment, one to the election inspectors (officers) holding the election for the Democratic primary, and one to the election inspectors (officers) holding the election for the Republican primary.

In reference to your last inquiry, this office held in an opinion found in Vol. 48, page 106, *supra*, that under the provisions of Title 17, Section 55, Code of Alabama 1940, the judge of probate may employ clerical assistants for the preparation of each list furnished the election inspectors (officers), and such clerical help may be paid for the preparation of each of said lists. However, as pointed out in this opinion, the compensation provided by Section 55, *supra*, must be paid to the clerical assistants employed to prepare such lists, and not the judge of probate. A copy of this opinion is enclosed for your convenience. Section 55, *supra*, was amended by Act No. 385, General and Local Acts 1951, page 677. However, this amendment does not alter the conclusions reached in the above opinion. The maximum amount of compensation that may be paid to such clerical assistants is set out in Section 55, as amended, *supra*.

See also Quarterly Report of Attorney General, Vol. 25, page 180, *supra*: Vol. 48, page 110.

Yours very truly,

SI GARRETT

Attorney General

March 13, 1952

Hon. Holt A. McDowell

Sheriff

Jefferson County

Birmingham 3, Alabama

Elections — Voting Machines — Compensation.

1. In counties where elections are conducted in whole or in part by the use of voting machines, all election officials are entitled to receive \$3.00 as provided in Act No. 409, General Acts 1943, page 375, as amended by Act No. 240, General Acts 1945, page 359, in addition to the compensation now provided by law for election officials.

2. Where more than one voting machine is used in an election district, the required number of election officials should be appointed for each machine.

3. No returning officer should be appointed to serve in an election district in which voting machines are used; however, the per-

son who actually delivers the canvass of returns as required by law is entitled to the compensation provided by Act No. 127, General Acts 1947, page 38.

Opinion by Assistant Attorney General Johnson.

Dear Sir:

You request for an official opinion, bearing date of January 31, 1952, is as follows:

"I would appreciate an immediate opinion from you with reference to the following questions which have presented themselves in connection with the forthcoming Democratic Primaries.

"(1) Title 17, Section 103. (1) 1949 Cumulative Pocket Part, Code of Alabama 1940, among other things, provides that in all counties and municipalities of this State in which elections are conducted in whole, or in part by voting machines, all election officials shall be allowed \$3.00, which shall be in addition to the compensation now provided by law for election officials.

"In Jefferson County election machines will be used in only about forty-two (42) districts out of two hundred sixty-two (262) districts, and in some districts more than one machine will be used. In this connection, please advise me if the compensation for election officials serving in districts where no machine is used are entitled to \$3.00, in addition to the compensations now provided by law.

"(2) Title 17, Section 105, Code of Alabama 1940, provides that election officers for such voting machine shall consist of Inspector, Chief Clerk, and First and Second Clerks.

"It is contemplated that in Jefferson County in several districts more than one machine will be used in such district. In this connection, please advise me whether each machine used in a district shall have an Inspector, a Chief Clerk, and a First and Second Clerk, or whether the election officials designated shall serve on all the machines in such districts.

"(3) Title 17, Section 112, Code of Alabama 1940, provides that the certificates of results shall be delivered in the same manner and to the same authority as now provided by law. In this connection, kindly advise me if such voting machine used in a district shall have a separate canvassing or returning official or shall one such official serve such district even though more than one machine is used.

"In addition to the election officials provided in Title 17, Section 105, Code of Alabama 1940, shall a returning officer be appointed, or in the event one shall not be, which official is responsible for returning the certificate of results from the respective machines or districts?

"May I make bold to urge your immediate attention to this request as we are urgently in need of setting up the Jefferson County machinery for conducting the forthcoming election. Therefore, your usual prompt and courteous attention to my request for official opinions will be greatly appreciated."

Your first question is answered in the affirmative. Section 1 of Act No. 409, General Acts 1943, page 375, as amended by Act No. 240, General Acts 1945, page 359, reads as follows:

"Section 1. That in all counties and municipalities of this State in which elections are conducted in whole or in part by voting machines, **all** election officials shall be entitled to three dollars which shall be in addition to the compensation now provided by law for election officials. When the election is a municipal election, said compensation shall be paid out of the general fund of the municipality, and in all other elections, it shall be paid out of the County Treasury, on proper proof of the service rendered." (Emphasis supplied)

Inasmuch as elections in Jefferson County are conducted in whole or in part by use of voting machines, under the above quoted section **all election officials** in said county are entitled to the amount of \$3.00 in addition to the compensation now provided by law for election officials.

In answer to your second question, I find that this office has heretofore considered the question of how many groups of election officers should be appointed where more than one voting machine or ballot box is used at any voting place, and has held that the required number of election officers should be appointed for each such voting machine or ballot box. Quarterly Report of Attorney General, Vol. 53, page 177. See also opinion to Hon. Henry W. Smith, President, Etowah County Board of Revenue, under date of November 15, 1951 (Ms.).

The instant situation is analogous, and you are advised that where more than one voting machine is used in an election district, the required number of election officials should be appointed for each such voting machine so used.

I now consider your third inquiry. In Quarterly Report of Attorney General, Vol. 48, page 33, this office has held that in an election district in which voting machines are used, there is no necessity or authority for the appointment of a returning officer for such election district. In this connection I quote from this opinion as follows:

"In this connection, your attention is called to Title 17, Section 112, Code of Alabama 1940, which provides in detail the method of canvassing the returns on each machine used in an election where voting machines have been adopted. This section provides that the return of the canvass, as required by law, shall be filled out, and shall show the number of votes cast for each candidate, the number of votes cast for and against any proposition submitted, and that such returns of canvass shall then be signed by the election officials. In another part of this same section, it is provided that irregular and challenged ballots, properly sealed, and signed, shall be filed with the original statement of canvass, which said canvass shall then, by the election officials, be delivered in the same manner and by the same authorities as now provided by law. These provisions of Section 112, *supra*, in my opinion, do away with the necessity of appointing a returning officer in those elections in which voting machines are used."

However, this office has held that the person who delivers the canvass of returns as required by Title 17, Section 112, Code of Alabama 1940, is entitled to receive the same compensation for delivering such canvass as a returning officer is entitled to receive under the provisions of Act No. 127, General Acts 1947, page 38, for making the return of

the election for which he was appointed. Quarterly Report of Attorney General, Vol. 51, page 82.

Note the reasoning in this opinion:

"It is stated in Title 17, Section 112, Code of Alabama 1940, that the statement of canvass of the result of elections held on voting machines shall be signed by the election officials and delivered in the same manner and to the same authorities as now provided by law. Unquestionably, the Legislature intended that one of the election officials serving on voting machines was to deliver this statement of canvass to proper authorities.

"It is provided in Act No. 127, supra, that the returning officer shall receive five cents per mile in going to the courthouse and returning to the place of holding the election as compensation for his services in making the return of the election.

"With the legislative intent in mind that the Legislature intended that all election officials throughout the State should receive the same compensation, it is my opinion that the inspector may either designate himself or one of the other officials serving on voting machines as the person to deliver the canvass of returns to the proper authorities. This person, by whatever name he might be designated, is, in my judgment, entitled to the five cents per mile for services rendered by him as provided by Act No. 127, supra."

You are, therefore, advised that, although no returning officer should be appointed for the election district in which voting machines are used, the person who actually delivers the canvass of returns as required by law is entitled to receive the compensation provided for by law.

Yours very truly,

SI GARRETT

Attorney General

March 14, 1952

Hon. Theo Hurt

Clerk and Register

Circuit Court

Perry County

Marion, Alabama

Elections — Absentee Ballots — Constitutional Amendments.

1. A register of a circuit court, who is an unopposed candidate for clerk of the circuit court in the first Democratic Primary, is disqualified to serve as absentee election manager in the first primary, since he is a candidate.

2. A register of a circuit court, who is an unopposed or successful candidate in the first Democratic Primary, may serve as absentee election manager for the second primary, since he is not a candidate in the second primary.

3. A register of the circuit court, who is a candidate for circuit clerk in the first Democratic Primary, may serve as absentee election manager for the special election on the constitutional amendment submitted on the same day as the first Democratic Primary, since he is not a candidate in the special election.

4. A register of the circuit court, who is the nominee of the Democratic Party for clerk of the circuit court, may not serve as absentee election manager for the general election in November, because he is a candidate in November.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of March 3, 1952, is as follows:

"I am a candidate for re-election for Clerk of the Circuit Court of Perry County, Alabama, and will have no opponent.

"Please advise me if I will be qualified to act as Absentee Election Manager on May 6th. If your answer is in the negative, please advise if I may act as Absentee Election Manager for the Second Primary, and also for the Constitutional Amendment Election if one is held on same date as the Primary Election. Also may I act as Absentee Election Manager for the General Election in November next?

"I understand that my name will not be placed on the ballot for the Primary Election, as per Section 344, Title 17, 1940 Code of Alabama, as amended.

I am of the opinion that since you are a candidate in the Democratic Primary election to be held on May 6, 1952, you will not be qualified to

handle absentee ballots used in the Democratic Primary. Act No. 424, General and Local Acts 1949, page 601, provides for absentee voting in primary, general, and special elections. Section 4(a) thereof provides as follows:

"Section 4.(a) In any election to which this Act pertains, when the register is a candidate for any office, he shall be disqualified from performing any of the duties in reference to the handling of absentee ballots which are herein imposed on him. The register shall, at least thirty days prior to the date of the election, certify his candidacy or that he is disqualified to so serve or that he is otherwise prevented from serving to the presiding circuit judge of the county. Thereupon, the judge shall appoint a person qualified by training and experience and who is a qualified elector of the county and who is not a candidate in the election to perform the duties of the register as prescribed by this Act and designate the place or office where said duties shall be performed. Any person so appointed shall have all the powers, duties, and responsibilities of the register under this Act and shall be designated and known as an 'absentee election manager.'"

Although you are unopposed and your name will not appear on the ballot in the first primary, it is my view that you are a candidate in the first primary, and as such, you are prohibited from handling the absentee ballots in the primary election. See Quarterly Report of Attorney General Vol. 19, page 97. I enclose a copy of this opinion for your information.

It is further my opinion that you may act as absentee election manager in the second primary, for the reason that being unopposed in the first primary, you will be nominated as a result of that election and will not be a candidate in the second primary. Quarterly Report of Attorney General, Vol. 19, page 154. In this opinion, it was held that a judge of probate who was nominated in the first primary was not a candidate in the second primary, and was, therefore, not disqualified from handling absentee ballots. This opinion is controlling concerning the second primary.

In my opinion, you may handle absentee ballots for the special constitutional amendment election to be held at the time of the first primary. I am informed that there is a constitutional amendment to be submitted to the qualified electors of Alabama on May 6, 1952. This, of course, is a special election. You are not a candidate so far as the special election on the constitutional amendment is concerned, although you are a candidate in the party primary, which is held on the same day. Cf. Opinion to Hon. John A. Williams, Circuit Clerk and Register, Chambers County, dated November 7, 1951 (Ms.).

It is my opinion that you are not qualified to act as absentee election manager for the general election in November, for the reason that at that time you will be a candidate, the Democratic nominee, and your name will appear on the ballot. Section 4(a), *supra*, prohibits you from serving at that time.

Yours very truly,

SI GARRETT

Attorney General

March 14, 1952

Mrs. T. L. Bear, Jr., Chairman

Alabama State Milk Control Board

C A P I T O L

Milk Control Board — Traveling Expenses.

Members of the Alabama State Milk Control Board are limited to sixty days per annum for which daily compensation may be paid such members, but such limitation does not apply to the amount members of the board may receive for subsistences and traveling expenses.

Opinion by Assistant Attorney General Miller.

Dear Mrs. Bear:

Your requests for an official opinion, bearing date of December 6, 1951, is as follows:

"Your attention is invited to Section 207, Title 22, Code of Alabama 1940, which Section was revised by the Legislature on September 15, 1951. The last sentence of this Section reads as follows:

"The compensation of the members of the Alabama state milk control board shall be fifteen dollars per day for each day actually engaged in the official functions of the Alabama state milk control board, not to exceed sixty days per annum, plus subsistence and necessary traveling expenses at the rate allowed other state employees."

"The Milk Control Board finds itself at the present time involved in the solution of several very perplexing problems relating to the milk industry of the state. It is spending considerably more time in working out these problems than would normally be expected of a Board. During October the Board worked about eight days, during November it worked eight or nine days and during January and February public hearings must be held in all milk sheds of the state which will probably consume at least twenty days. You can readily see that the sixty day limitation may be met before next September 30th, should the Board find itself compelled to continue to devote a great deal of time to its work.

"I propose to you the following question:

"Can the member of the Board be paid subsistence and necessary traveling expenses at the rate allowed other state employees for days actually worked beyond the limited sixty days during which the members may draw per diem?"

It is my opinion that your question should be answered in the affirmative.

Title 22, Section 207, Code of Alabama 1940, which creates the Alabama State Milk Control Board, provides with respect to the compensation, subsistence, and traveling expenses to be paid to its members, as follows:

"... The compensation of the members of the Alabama state milk control board shall be fixed at seven and one-half dollars per day for each day actually engaged in the official functions of the Alabama state milk control board, plus subsistence and necessary traveling expenses at the rate allowed other state employees."

Act No. 785, General and Local Acts 1951, page 1383, amends the above-quoted Code section to read:

"... The compensation of the members of the Alabama state milk control board shall be **fifteen dollars** per day for each day actually engaged in the official functions of the Alabama state milk control board, **not to exceed sixty days per annum**, plus subsistence and necessary traveling expenses at the rate allowed other state employees." (Emphasis supplied.)

It can be seen from the above-quoted portion of Section 207, supra, and Act No. 785, supra, that the purpose of the 1951 amendment was to increase the compensation of members of the State Milk Control Board from seven and one-half dollars to fifteen dollars per day for each day actually engaged in the official functions of the board, and to limit the number of days for which its members may receive such per diem to sixty days per annum. The words "not to exceed sixty days per annum," without question, place a limitation upon the number of days for which the members of the board may be paid the prescribed daily compensation in any one year. To answer your question, it becomes necessary to determine whether this limitation also applies to the phrase "plus subsistence and necessary traveling expenses at the rate allowed other states employees."

It will be noted from the above-quoted portion of Section 207, as amended, supra, that the words "not to exceed sixty days per annum" are placed in the sentence immediately following the phrase which prescribes the daily compensation to be paid to the members of the board, and immediately preceding the phrase which prescribes the amount they are to receive for subsistence and traveling expenses. The rule of statutory construction applicable to the question presented by your inquiry, is found in 50 Am. Jur., Statutes, Sections 268 and 269, and is as follows:

"268.-Extension to Subsequent Words, Phrases, or Clauses. It is a general rule of statutory construction that where qualifying words are in the middle of a sentence, and apply to a particular branch of it, they are not to be extended to that which follows. * * *

"269.-Application to Last or Prior Antecedents. In construing statutes, qualifying words, phrases, and clauses, are ordinarily confined to the last antecedent, or to the words and phrases immediately preceding. * * * This rule of statutory construction, however, is not controlling or inflexible. It may be rebutted by the circumstances. Moreover, the rule should not be applied without reference to the meaning of the statute when read as a whole; it prevails where there is nothing in the statute as a whole, or in the subject matter or dominant purpose of the statute, requiring a different construction, and is not applicable where a further extension or inclusion is clearly required by the intent and meaning of the context or disclosed by the entire act. * * *

From the above rule of statutory construction, it appears that where qualifying words are in the middle of a sentence and apply to a particular branch of it, they are not to be extended to that which follows, unless a reading of the statute as a whole or the subject or dominant purpose of the statute requires a different construction. However, such rule is not applicable if further extension of the qualifying words is clearly required by the intent and meaning of the act.

In view of the wording of Section 207, as amended, *supra*, it is my opinion that the words "not to exceed sixty days per annum" apply only to the amount of daily compensation that may be paid to members of the board, and not to the amount they may receive for subsistence and traveling expenses.

The phraseology used in Section 207, as amended, *supra*, indicates that the Legislature did not intend to limit or restrict the number of days that the board should meet and the members hereof be paid subsistence and traveling expenses incident to attending such meetings; but, the Legislature intended to limit only the number of days for which such members could be paid the stipulated daily compensation. Moreover, a reading of the entire statute which creates the State Milk Control Board and sets out its powers, duties, and functions does not disclose that there is any limitation placed upon the number of days such board can meet to perform its official functions. If it had been the intent of the Legislature to limit the number of days for which the members of the board could be paid subsistence and traveling expenses, or the amount to be paid these members, such intention might easily have been evidenced or clearly stated by wording Section 207, as amended, *supra*, in such a manner as would clearly limit or restrict the number of days for which members could be paid subsistence and traveling allowance.

In view of the above, it is my opinion that, although the compensation to be paid to the members of the State Milk Control Board cannot be paid to such members for a period exceeding sixty days in any one year, such limitation does not apply to subsistence and traveling expenses which they may receive.

Yours very truly,

SI GARRETT

Attorney General

March 18, 1952

Hon. W. O. Dobbins, Jr.

Director, State Planning Board
102 Church Street
Montgomery 4, Alabama

Municipalities — Planning and zoning.

The appointed members of a municipal planning commission shall hold no other municipal office with or without compensation, except that one of such appointed members may be a member of the zoning board of adjustment or appeals; therefore, a member of a municipal planning commission is prohibited from serving as a commissioner on a municipal housing authority. Title 37, Section 788, Code of Alabama 1940.

Opinion by Assistant Attorney General Straub.

Dear Sir:

Your request for an official opinion bearing date of September 18, 1951, is as follows:

"The Alabama State Planning Board provides technical services in the field of city planning to many Alabama municipalities.

"Recently a question has arisen pertaining to the membership of city planning commissions and other public and quasi-public bodies. In a particular instance, two members of a city planning commission are also members of the municipal housing authority. These members serve gratis in both positions. However, according to Title 37, Article 3, Section 788, PERSONNEL OF MUNICIPAL PLANNING COMMISSION: COMPENSATION; TERMS OF OFFICE, ETC., 'All members of the commission shall serve as such without compensation; and the appointed members shall hold no other municipal office, except that one of such appointed members may be a member of the zoning board of adjustment or appeals.'

"The question is: does the phrase 'no other municipal office' embrace only elective or salaried positions or does it also include non-paid positions on municipal boards and commissions?

"We would appreciate your advice in this matter."

Title 37, Section 788, Code of Alabama 1940, provides, in pertinent part, as follows:

" . . . all members of the commission shall serve as such without compensation, and the appointed members shall hold no other municipal office, except that one of such appointed members may be a member of the zoning board of adjustment or appeals."

The provisions of Section 788, supra, should be given their common, ordinary meaning. **Helms v. Alabama Pension Commission**, 27 Ala. App. 267, 170

So. 649. Generally, an exception limits the material of a statute immediately preceding it. Sutherland Statutory Construction, Vol. II, Section 4936.

" . . . where express exceptions are made, the legal presumption is that the legislature did not intend to save other cases from the operation of the statute. In such case, the inference is a strong one that no other exceptions were intended, and the rule generally applied is that an exception in a statute amounts to an affirmation of the application of its provisions to all other cases not excepted, and excludes all other exceptions or the enlargement of exceptions made." 50 Am. Jur., Statutes, Section 434.

Hence, viewing the provision of Section 788, supra, in the light of the above authorities, the only conclusion to be drawn is that the insertion of the exception, "except that one of such appointed members may be a member of the zoning board of adjustment or appeals," after the provision, "the appointed members shall hold no other municipal office," is for the purpose of limiting the latter provision.

Clearly, a commissioner of a municipal housing authority holds a "municipal office" within the meaning of Section 788, supra.

Therefore, it is my opinion that an appointed member of a municipal planning commission can hold no other municipal office with or without compensation, except that one of such appointed members may be a member of the zoning board of adjustment or appeals.

Yours very truly,

SI GARRETT

Attorney General

March 18, 1952

Hon. W. J. Terry

State Superintendent of Education

Montgomery 4, Alabama

State Board of Education — Colleges and Universities — Intoxicating Liquors.

Under the authority of Act No. 646, General and Local Acts 1949, page 988, the State Board of Education may, under the facts considered, pay the necessary expenses of instructors receiving specialized training relating to the influence and effects of alcohol on human health and behavior and on social and economic conditions.

Opinion by Assistant Attorney General Barton.

Dear Sir:

Your request for an official opinion, bearing date of February 19, 1952, is as follows:

"Your attention is directed to Act No. 646, approved September 19, 1949. It is permissible under the provisions of this act to pay out funds necessary for the expenses of a member of the faculty of Howard College, Birmingham, Alabama, (privately owned and operated by the Baptist Association), to attend Yale University, Center of Alcohol Studies, New Haven, Connecticut? The person thus trained would agree to conduct regular college courses in alcohol education for prospective teachers and would also conduct extension courses and workshops for teachers in the public schools."

Your inquiry should be answered in the affirmative.

In this regard, your attention is called to the pertinent parts of Act No. 646, General and Local Acts 1949, page 988, which read as follows:

"Section 1. Appropriation: The State Board of Education may use and allocate any funds for educational Research, preparation and publication of instructional material. . . .

"Section 2. Purpose: The funds allocated under the provisions of this Act shall be used for the purpose of creating and maintaining State educational research services: a) for the development and production and procurement of curriculum materials and units of instruction. . . . b) for the publication, procurement and dissemination of curriculum materials, units of instruction, and suggested methods of instruction relating to the influence and effect of alcohol on human health and behavior and on social and economic conditions. . .

"Section 3. . . . The State Board of Education is authorized to expend such amounts as may be necessary of the moneys allocated to it under the provisions of this Act for the employment of a specialist or specialists and /or contract for the services of specialists in research and in development and production of curriculum materials and units of instruction and for all other expenses necessary in carrying out the purposes of this Act."

It is to be noted from the quoted parts of Act No. 646, supra, that the funds allocated by the State Board of Education for research may be used to defray all necessary expenses incurred in carrying out the purposes of the said act.

From the context of this act, it will be noted that its main purpose is to promote an educational program to be used in the public schools of this State in relation to the influence and effects of alcohol on human health and behavior and on social and economic conditions. It is common knowledge that trained instructors in this field are necessary effectively to carry out the purposes of this act.

You are, therefore, advised that the expenditures contemplated by the State Board of Education in carrying out the additional program provided for by Act No. 646, supra, would be legal expenditures under the provisions of the act.

Yours very truly,

SI GARRETT

Attorney General

March 31, 1952

Hon. Lawrence A. May

First Assistant

State Service Commissioner

Department of Veterans' Affairs

C A P I T O L

Veterans — Taxation — Licenses — Exemptions.

1. Under the provisions of Act No. 353, General Acts 1945, page 570, as amended by Act No. 698, General Acts 1947, page 535, a veteran who serves one term in the armed forces for a period of more than ninety days, is honorably discharged, and does not thereafter claim his exemption for six years from license taxes, who re-enters the armed forces, serves another ninety days, and is honorably discharged, may claim his exemption under said act for a period of six years from the date of his last discharge.

2. A veteran who, following his first period of service, avails himself of all or part of his exemption, and thereafter re-enters the service and serves a period of ninety days and is again discharged, is entitled to exemption from license taxes based upon the last period of service.

3. A veteran who has served two separate terms of service in the armed forces may claim a six-year exemption from business and occupational license taxes for a period of six years after his discharge or termination from service in respect to each period of military service.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of February 29, 1952, is as follows:

"In view of your opinion to this writer, dated February 14, 1952, on the subject of veterans business or occupational license exemptions, two

further questions have arisen and we would appreciate a supplementary opinion in answer to the following:

"(1) If a veteran who served in the armed forces after September 16, 1940 for a period of more than ninety days was honorably discharged and remained a civilian for more than six years and did not avail himself of the license exemptions provided by Act No. 353, General Acts 1945, as amended by Act No. 698, General Acts 1947, and re-entered the service at a later date, serves more than ninety days and receives an honorable discharge or honorable termination of service from the latter enlistment, is he entitled to the exemptions under said acts for a period of six years from the date of the last discharge?

"(2) If your answer to (1) above is in the affirmative, what is your opinion in the case of a veteran who following the discharge from his first period of service avails himself of the entitlement for all or part of the six year period while a civilian and later re-enters service and is honorably discharged after having served more than ninety days during the last enlistment? Will he be entitled to the license exemptions based upon the last period of service?"

Your questions involve a construction of Act No. 353, General Acts 1945, page 570, as amended by Act No. 698, General Acts 1947, page 535. There are several opinions of this office which treat with this subject. See Quarterly Report of Attorney General, Vol. 60, page 100, and opinion to you under date of February 14, 1952 (Ms.). In the latter opinion, this office held that the period within which a veteran may serve in the armed forces and there become eligible for exemption from license taxes under Act No. 353, as amended, supra, was presently running, and that veterans who now serve for ninety days before the signing of a treaty of peace with Germany may, if otherwise eligible, claim and receive their exemption.

The opinion in Vol. 60, page 100, supra, among other things, holds that a period of six years during which exemption may be claimed under Act No. 353, as amended, supra, was from the effective date of Act No. 353, supra, July 6, 1945, and not October 13, 1947, effective date of Act No. 698, supra.

In answer to your first inquiry, I am of the opinion that a veteran who served in the armed forces after September 16, 1940, for a period of ninety days, and was thereafter honorably discharged and remained a civilian for more than six years, and did not avail himself of the license exemptions provided by Act No. 353, as amended, supra, waived his claim for exemption in respect to his first term of service in the armed forces. It is well known that exemptions must be claimed before they are effective, and Act No. 353, as amended, supra, requires the claim to be made within six years after discharge or termination of service. In the case referred to in your first question, the veteran not having claimed his exemption during the period of six years after his termination of service, lost his right to assert that claim.

Of course, if the veteran's discharge or termination of service occurred on or before July 6, 1945, he had six years after July 6, 1945, to claim his exemption. This period, of course, expired on July 6, 1951.

You state in your first inquiry, however, that the veteran re-entered the service at a later date, served more than ninety days, and received an honorable discharge. In my opinion, he is entitled to claim his exemption within a period of six years from the date of his termination of service in respect to his second term in the armed forces. Surely, a veteran who has never claimed his exemption, even though he served in the armed forces and later serves again

in the armed forces for a period of ninety days or more, is entitled to claim within six years an exemption from business or occupational license during the period of six years, as provided for in Act No. 353, as amended, *supra*.

Your second question, in my opinion, should be answered in the affirmative. There, we have the case of a veteran who served in the armed forces, and upon termination of service, claimed all or part of the six-year period of exemption from business or occupational license tax. Thereafter, he re-entered the service, and was again honorably discharged after having served another period of ninety days. In my opinion, such veteran is entitled to claim a period of exemption from business or occupational taxes for another period of six years after the termination of his second term of service. It is my view that a veteran having served the required length of time in the armed forces more than once, and these periods of service in the armed forces having been interrupted by a termination, may claim his exemption from business and occupational license in respect to each period of service in the armed forces. I believe that, although the rule prevails that exemptions from taxes should be construed strictly in favor of the taxing power, the Legislature intended that the laws granting exemptions to veterans should be liberally construed.

Perhaps when Act No. 698, *supra*, was enacted in 1947, the Legislature did not contemplate the continuation of World War II for an indefinite period of time. No doubt, the members of the Legislature thought that persons would serve in the armed forces one term and not be recalled. It is well to note, however, that Act No. 353, as amended, *supra*, was not amended or changed in any way during the 1951 Session of the Legislature, at which time it must have been well known to members of the Legislature that many veterans who had served in World War II, and who had returned as civilians and were claiming exemptions from business and occupational taxes, were being recalled for the Korean conflict and other military duties. To me, this is an indication that the Legislature intended to have Act No. 353, as amended, *supra*, continue to be effective for those then entering the service until the termination of World War II by the signing of a definitive treaty of peace with Germany, which has not yet occurred.

In summary, therefore, you are advised that it is my opinion that veterans serving the required length of time in the armed forces may claim their exceptions from business and occupational license taxes under the provisions of Act No. 353, as amended, *supra*, in respect to each period of service in the armed forces.

Yours very truly,

SI GARRETT

Attorney General

March 31, 1952

Hon. J. W. Stuart

Judge of Probate

Jackson County

Scottsboro, Alabama

Motor Vehicles — License Tags.

Passenger vehicles used by a church to transport passengers to church services, without charge or payment of fare, should carry automobile license tags, and the registration fee therefor should be paid as prescribed by Title 51, Section 693, Code of Alabama 1940, as amended by Act No. 206, General and Local Acts 1951, page 468.

Opinion by Assistant Attorney General Nachman.

Dear Sir:

Your request for an official opinion, bearing date of December 15, 1951, is as follows:

"A church in Scottsboro is operating several buses for the purpose of hauling passengers to and from church services. No charge is made for transporting these passengers. The church operates at least one such bus which was formerly a school bus. It is a school bus body mounted on a 1½ ton truck chassis. They also have one sedan-type bus which is an elongated automobile capable of hauling 15 to 18 passengers such as is commonly used to transport passengers to and from airports. The church has been cited to purchase motor vehicle license plates for these vehicles.

"You will note that the Revenue Code provides that Bus Tags shall be issued to motor vehicles being operated to transport passengers for hire. It would appear that this license schedule would not apply. You will also note that Title 51, Section 692, Code of Alabama, 1940, defines a Motor Truck as 'a motor propelled vehicle designed for carrying freight or merchandise.' It would therefore appear that these vehicles would not be subject to a truck tag.

"I would like your opinion as to what type of Motor Vehicle License Plates these vehicles should carry."

The motor vehicles you describe should carry automobile license tags, and the registration fees therefor should be as prescribed for the proper and respective weights of said vehicles by the provisions of Title 51, Section 693, Code of Alabama 1940, as amended by Act No. 206, General and Local Acts 1951, page 468.

No charge is made for transporting passengers in these vehicles; consequently, the vehicles are not operated "for hire." See Quarterly Report of Attorney General, Vol. 16, page 264. Therefore, they do not come under the provisions of Title 51, Section 695, Code of Alabama 1940, providing for transporting passengers paying fare or charges. . . . For the same reason, the vehicles in question are not covered by the provisions of Section 694 of Title 51,

Code of Alabama 1940, prescribing licenses for "jitney buses," as defined in Section 692 of this title.

Both vehicles, as described, appear to have fixed seats and are obviously designed for carrying passengers rather than freight or merchandise. They are, therefore, specifically excluded from the definition of "motor trucks" set out in Section 692, *supra*. Whether a vehicle is a truck or passenger car is a question of fact to be ascertained by an examination of such vehicle. Quarterly Report of Attorney General, Vol. 29, page 83; Vol. 17, page 172; Vol. 49, page 77.

Consequently, since the motor vehicles in question are excluded from all other categories, they must fall within the statutory definition of an "automobile," which is defined in Section 692, *supra*, as "every motor vehicle, as herein defined, except motorcycles." As to such "automobiles and motor cars kept for private use," the type of license and fee therefor is prescribed by Section 693, as amended, *supra*.

Yours very truly,

SI GARRETT

Attorney General

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